

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

JAMIE LEIGH JONES,  
PLAINTIFF,

v.

HALLIBURTON COMPANY D/B/A  
KBR KELLOGG BROWN & ROOT  
(KBR); KELLOGG BROWN & ROOT  
SERVICES, INC.;  
DEFENDANTS.  
. . . . .

.  
.  
. H-07-CV-2719  
. HOUSTON, TEXAS  
. JUNE 23, 2011  
. 8:49 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

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P R O C E E D I N G S

*(Jury not present)*

THE COURT: If there's a scheduling issue with anybody, I'll try to work around it, but --

MR. ESTEFAN: That's -- we were just talking about working in another of their experts next week sometime.

THE COURT: That's fine.

MR. ESTEFAN: That's fine. So we'll work with the Court's schedule.

THE COURT: Certainly we agree on the dismissal. It's not been signed yet, and I don't see a signature page.

MR. MCKINNEY: It's opposed, your Honor.

THE COURT: Oh, it is?

MR. MCKINNEY: It is. And I would like to put to the Court the following:

The Court ruled in limine --

THE COURT: Yes.

MR. MCKINNEY: -- that these convictions would not come in. And I did mention in my opening statement that there was a counterclaim on file and discussed it briefly. However, the evidence has not started on the counterclaim, not offered by me, in any event. And as the Court knows, I argued far more vigorously than I should have yesterday --

THE COURT: No, no, no. I was not offended.

MR. MCKINNEY: -- that the, quote, defamation damage

08:50 1 defense, close quote, pretext or rationale -- pretext here,  
2 rationale here -- was essentially a pretext and prejudiced my  
3 client.

4 And in view of the Court's ruling, which I  
08:51 5 believe to be different than the in limine ruling, that's a  
6 material change in the posture of the trial. And therefore, I  
7 would like to drop the counterclaim and have conferred with my  
8 client and secured his approval to do so. We are not in any  
9 way amending a pleading or changing a pleading.

08:51 10 THE COURT: I understand. I understand. I actually  
11 think that's a wise move.

12 Let me hear from plaintiff.

13 MR. ESTEFAN: Several things, your Honor. One is that  
14 I notice their counterclaim is a dismissal without prejudice,  
08:51 15 which obviously implies that they intend to leave their options  
16 open to bring it up again.

17 Secondly, it's slander -- the defamation claim  
18 has -- there's been evidence of it. We've talked about it on  
19 the stand. So now to throw that grenade in the jury box and  
08:52 20 then run out of the room leaves us with a jury going, "A lawyer  
21 said" -- and two lawyers have said something about there being  
22 a slander claim here against Ms. Jones. And, so, we're going  
23 to be -- we can't explain the absence of the slander claim.

24 THE COURT: I can explain that -- I can explain that  
08:52 25 to the jury.

08:52 1 MR. ESTEFAN: Okay. Well, then, if the Court is  
2 inclined to grant defendants' motion over our objection, I  
3 would ask that it be a dismissal without -- I mean, with  
4 prejudice to refile and that an instruction be given to the  
08:52 5 jury. And so that -- either the Court can do it or we can in  
6 our closing argument address it.

7 Otherwise, the jury is left with the wrong  
8 impression about what claims are being asserted here.

9 THE COURT: And I gather KBR has no dog in this fight  
08:52 10 at all.

11 MR. HEDGES: We do not, your Honor.

12 MS. VORPAHL: That's exactly right. We have no dog.

13 MR. MCKINNEY: May I say --

14 THE COURT: Yes, sir.

08:52 15 MR. MCKINNEY: -- with respect to prejudice or lack of  
16 prejudice, as a practical matter, a dismissal without prejudice  
17 at this time would leave my client with all acts of defamation,  
18 up to and including today, time barred because it's a one-year  
19 statute under Texas law.

08:53 20 THE COURT: Yes. Yes, it would.

21 MR. MCKINNEY: So, we would have no objection to a  
22 dismissal with prejudice as to any and all acts of defamation  
23 as of the date of signing but without prejudice to any  
24 subsequent acts of defamation; that is, we do not want to be  
08:53 25 precluded on the merits to anything that might happen after

08:53 1 today.

2 THE COURT: Doesn't that give you everything you want?

3 MR. ESTEFAN: It does, your Honor, except that I -- I  
4 need to put on the record that I continue to take exception to  
08:53 5 opposing counsel saying, "They have pretext, they have agendas,  
6 they have all these" -- you know, that -- that's unnecessary.

7 THE COURT: Well, I --

8 MR. ESTEFAN: And for them to say that we had a  
9 pretext because we're defending our client is, frankly,  
08:54 10 insulting.

11 MR. McKINNEY: In which case, I withdraw the comment.  
12 I anticipated, quite frankly, a much more vigorous opposition.  
13 And I apologize for any questions I raised. But I really did  
14 think that this motion would be far more opposed than it is.

08:54 15 And I did exceed the bounds of decency, and I  
16 apologize to the Court and especially to counsel.

17 THE COURT: Okay. Thank you very much. That was a  
18 handsome apology.

19 I will grant the motion for dismissal of the  
08:54 20 counterclaim with prejudice up to today's date, without  
21 prejudice as to any later date.

22 MR. ESTEFAN: Your Honor, one final point on that. Is  
23 the plaintiff entitled to -- counter-defendant entitled to  
24 costs for the defense of the slander?

08:54 25 THE COURT: At the end of the trial, I always -- I

08:54 1 always make my ruling on attorney's fees and costs. Because I  
2 think, rather than sharpshooting one act or another or one  
3 inadvertent statement or another, I would rather see the  
4 totality of it and decide --

08:55 5 MR. ESTEFAN: Understood, your Honor.

6 THE COURT: -- when it's appropriate, to shift costs  
7 or expenses.

8 MR. ESTEFAN: I understand your ruling, your Honor.

9 THE COURT: Okay.

08:55 10 MS. HOLCOMBE: Your Honor, we have one more matter to  
11 take up with the Court, unless you all want to take it up at  
12 lunchtime, the deposition designations that I e-mailed about.

13 MR. ESTEFAN: I don't know how long they'll go on, on  
14 direct of Mr. Bortz. So, we may -- we may -- I don't think  
08:55 15 we'll get to that depo. Is it --

16 THE COURT: Now, let me make --

17 MS. HOLCOMBE: Yeah.

18 THE COURT: -- let me make one thing clear.  
19 Mr. Bortz, then -- if you don't have your counterclaim, then  
08:55 20 you would do the direct, wouldn't you?

21 MR. ESTEFAN: I'm -- I'm calling him as an adverse  
22 witness, your Honor. So it would be in the nature of a  
23 cross-examination of Mr. Bortz. But they then would direct  
24 examine.

08:55 25 THE COURT: So, you're saying you go first?



08:55

1 MR. ESTEFAN: I do.

2 THE COURT: Yeah, I think that's right.

3 MR. ESTEFAN: I'm calling him in my case in chief.

08:55

4 MR. McKINNEY: And just to be 100 percent painfully  
5 clear, the -- no part of the arrest or conviction will come  
6 into evidence at this point.

7 THE COURT: That's right.

8 MR. ESTEFAN: And plaintiff will not -- will not  
9 violate that court ruling.

08:56

10 THE COURT: Very good.

11 MR. McKINNEY: Now, I have another matter that I  
12 wanted to take up with the Court, obviously outside the  
13 presence of the jury.

08:56

14 When I asked Ms. Jones on the witness stand if  
15 escorting her to the bus stop was an unusual act for a rapist,  
16 her response was that he knew he was outside the Court's  
17 jurisdiction, which was not really a response to the question.  
18 It was injecting matters into the case, that are really not  
19 responsive to the question.

08:56

20 I do not wish to imply -- I don't wish to  
21 expressly mention the grand jury investigation; but to rebut  
22 that specific charge, I would like to elicit question --  
23 testimony from my client that he was, in fact, interviewed  
24 under oath by federal law enforcement officials, he waived the  
08:56 25 Fifth Amendment and testified fully and freely, and go no

08:57 1 further than that, simply to respond to that one statement.

2 THE COURT: Okay. I think his point is well taken.  
3 That was -- that was very misleading to say that. And  
4 Ms. Jones really isn't qualified to make a statement about  
08:57 5 federal court jurisdiction.

6 MR. KELLY: With due respect, your Honor, I understand  
7 the Court's ruling; but I want to -- I want to clarify  
8 something. It wasn't misleading to state it when you look at  
9 the e-mails that are not coming into evidence, I understand, in  
08:57 10 this court. But it's very clear from the e-mails that were  
11 sent to Ms. Jones that she was being told by the Department of  
12 State investigators that there was probably not going to be  
13 jurisdiction in this case and was ultimately called by the  
14 prosecutors and was told that the case was not going forward  
08:57 15 and one of the issues was a lack of jurisdiction.

16 I mean, so she wasn't being misleading. She may  
17 have gone beyond the bounds of the question, I'll -- I'll grant  
18 that. But she was not being misleading at all. That was  
19 actually a fact. And --

08:58 20 MR. HEDGES: I represented about 10 of those witnesses  
21 before the grand jury, and I don't think the Justice Department  
22 pays to fly about 12 or 15 people back from Iraq and  
23 Afghanistan to appear before a grand jury over several weeks in  
24 a case that was -- they don't think they have jurisdiction in,  
08:58 25 to begin with.

08:58 1 MR. KELLY: Except that they were getting heat from  
2 Congressman Poe's office for not having done anything; so, they  
3 put up a grand jury sham. Was it any wonder why there was no  
4 indictment at all when Mr. Hedges represented 10 of the  
08:58 5 witnesses?

6 MR. ESTEFAN: Judge, we're -- we're walking a fine  
7 line between the Department of State investigation and the  
8 grand jury. We're getting awfully close there.

9 THE COURT: I agree. I agree. How would you propose  
08:58 10 to rectify this?

11 MR. ESTEFAN: Well, I -- you know, I don't think that  
12 anything Ms. Jones said was -- was in any way improper as far  
13 as whether he's -- I mean, it was her impression of whether he  
14 was beyond the bounds of --

08:58 15 THE COURT: Well, I'm not saying she misrepresented  
16 things. But it -- introduces a -- what I believe to be a  
17 clearly erroneous statement of the law. And I think we need to  
18 do something about that. I just -- on the Department of State  
19 protectorate, for one American citizen to attack another, I  
08:59 20 really -- I really doubt that that's --

21 MR. ESTEFAN: Well --

22 THE COURT: -- that's beyond the Court's jurisdiction.

23 MR. ESTEFAN: I understand, your Honor. If you look  
24 at the nature of the question, though, Mr. McKinney invited the  
08:59 25 speculation when he asked the question, "Why would a rapist

08:59 1 still be in the room?" So he invited her to free roam, range  
2 as far as she can about -- I mean, if you -- it's the question  
3 that he elicited the answer for and now he doesn't like the  
4 answer.

08:59 5 MR. McKINNEY: Your Honor, I have the question and  
6 answer right here that I'm going to --

7 THE COURT: Well, let's -- let's get it literally,  
8 then.

9 MS. VORPAHL: Goes to the next page, too.

08:59 10 MR. McKINNEY: Understood.

11 This is at 226 of the certified record.

12 "Question: And I simply want to ask you this  
13 question. And I'm sure you don't agree with it. But does it  
14 not seem odd to you that a man who has, according to you, raped  
09:00 15 you would spend the night and then stick around and walk you  
16 outside for your job for work?

17 "Answer: He walked me outside.

18 "Question: Isn't that somewhat unusual behavior  
19 for a rapist?

09:00 20 "Answer: No. He knew he was outside of  
21 jurisdiction. He knew he was outside of this civil court  
22 system until I got involved. So, no. He was brazen enough to  
23 still be there.

24 "Question: All right. So, you know what was in  
09:00 25 Mr. Bortz' mind and you know why he spent the night in your

09:00 1 room and why he walked you outside, and that's what you're  
2 telling our jury?

3 "Answer: I'm telling you why -- you asked me  
4 why -- you asked me a question; and I answered it" --

09:00 5 She referred to me as Mr. Kelly, and you  
6 corrected her.

7 So, that's essentially -- the "outside the  
8 jurisdiction, and he knew that," is a rather incendiary  
9 statement that we would like to make a limited response. And  
09:01 10 that limited response is, A, he never believed he was -- he  
11 doesn't know what "jurisdiction" is. And more specifically, he  
12 was, in fact -- to directly rebut the statement that there's no  
13 jurisdiction, he was, in fact, interviewed by law enforcement  
14 officials.

09:01 15 THE COURT: Well, why don't we just left it at he knew  
16 he wasn't out of the jurisdiction.

17 MR. McKINNEY: Well, he doesn't really know what  
18 "jurisdiction" is, Judge. He's a fireman. And I think it is  
19 fair -- and we will be very careful about this. We will not  
09:01 20 indicate in any way that there was a grand jury or the grand  
21 jury failed to indict or that other people were talked to or  
22 anything like that. We're going to confine it solely and  
23 exclusively to Mr. Bortz' personal --

24 THE COURT: Okay. If you're not going to use the word  
09:01 25 "jurisdiction," what are you going to say? "Did you ever think

09:02 1 you were beyond American law?"

2 What's going to be the question?

3 MR. McKINNEY: I'm going to say -- well, first of all,  
4 let's keep in mind that Charles Bortz is going to testify to a  
09:02 5 perfectly consensual relationship. So court jurisdiction at  
6 the time really probably was not even remotely on his mind.  
7 And waking up the next morning, he's not thinking about  
8 jurisdiction either.

9 THE COURT: No, but I --

09:02 10 MR. McKINNEY: He -- he did return to the United  
11 States. He was examined. He did waive the Fifth. He did  
12 take -- he did speak fully and freely to federal investigative  
13 authorities, law enforcement authorities. And that's all I  
14 plan to offer.

09:02 15 THE COURT: Okay. I'm going to allow it.

16 All right.

17 MR. ESTEFAN: Your Honor, one more thing. Since it's  
18 a motion in limine, I plan to ask Mr. Bortz if KBR is paying  
19 for his lawyer. I think it goes to his bias on the issue of  
09:02 20 any of his testimony.

21 MR. McKINNEY: That's completely improper.

22 MR. ESTEFAN: Certainly, it's not.

23 MR. HEDGES: But if they do that, then I get to  
24 introduce the letter from KBR to Mr. Bortz saying, "We will pay  
09:03 25 for your lawyer if you agree to testify completely and

09:03 1 truthfully to the federal grand jury in Florida."

2 MR. ESTEFAN: No, that's a separate proceeding.  
3 They're paying for his defense of this lawsuit, not for his  
4 defense in the grand jury hearing. They did pay for that, too.  
09:03 5 That's a separate thing, Judge.

6 But it goes to his bias, and that's a witness'  
7 bias. He's a critical witness.

8 THE COURT: Well --

9 MR. McKINNEY: I'm going to -- I'm going to put  
09:03 10 something on the record right here.

11 The only reason why Mr. Estefan knows that is  
12 because we had what I thought were confidential discussions  
13 about resolving aspects of this case and I made that disclosure  
14 in a confidential communication in my office with Mr. Estefan  
09:03 15 and Mr. Kelly.

16 I have never told anyone who is paying me what,  
17 my hourly rate is, what my fee arrangements are. And it is a  
18 standard rule of evidence that the time and circumstances and  
19 compensation of -- and the attorney-client relationship are  
09:04 20 inadmissible save and except when a claimant is affirmatively  
21 seeking relief grounded on attorney's fees.

22 THE COURT: Yeah. I'm not going to allow introduction  
23 of anything on attorney's fees. That's like the grand jury  
24 investigation. We'll just get in a lengthy derivative  
09:04 25 proceeding on how much, is it KBR's policy, what were the

09:04 1 conditions. So, I'm not going to allow it.

2 Anything else before the jury comes in?

3 MR. KELLY: I would just like to clarify one thing,  
4 your Honor. I'm not asking for anything from the Court. I  
09:04 5 just want to make a clarification.

6 There's been -- on this jurisdictional issue, the  
7 truth of the matter is that the -- the Military  
8 Extra-Jurisdictional Act did not expand to cover these kinds of  
9 crimes until the Poe/Slaughter Amendment made that happen. And  
09:05 10 the Poe/Slaughter Amendment was enacted because of efforts by  
11 Jamie Leigh Jones to get it done because there had been no  
12 jurisdiction in this case.

13 So, her testimony from the stand was very  
14 truthful. It is obviously an issue way beyond what we want to  
09:05 15 go into in this trial, but the insinuation that it was  
16 untruthful is grossly inaccurate.

17 THE COURT: Okay. All right. Very well.

18 Okay. May we bring in the jury, please?

19 MS. VORPAHL: Your Honor, can I just say one thing for  
09:05 20 the record?

21 THE COURT: Uh-huh.

22 MS. VORPAHL: We removed the portions of the  
23 orientation handbook that specifically discuss the  
24 extraterritorial jurisdiction of the federal court system over  
09:05 25 persons in Iraq. I mean, so, I take big issue with -- with



09:05 1 what Mr. Kelly has just said. And we removed those portions  
2 from --

3 THE COURT: The original --

4 MS. VORPAHL: -- the handbook and redacted any  
09:05 5 references to them.

6 THE COURT: The original handbook that she would have  
7 had.

8 MS. VORPAHL: Yeah, the --

9 THE COURT: What is -- what --

09:05 10 MS. VORPAHL: -- the orientation materials.

11 THE COURT: -- would have said that there is  
12 jurisdiction.

13 MS. VORPAHL: Absolutely.

14 THE COURT: Okay. That's what I would have thought.

09:06 15 MS. VORPAHL: And I'll be happy to tender those --  
16 those documents --

17 THE COURT: Thank you.

18 MS. VORPAHL: -- if you would like to see them.

19 MR. McKINNEY: May I excuse myself for one brief  
09:06 20 moment before the jury comes in?

21 THE COURT: All right. Well --

22 MR. McKINNEY: That's fine.

23 THE COURT: I already signaled them to come.

24 MR. McKINNEY: Okay. We're good.

09:06 25 *(Sotto voce discussion at bench with court staff)*

09:06 1 THE COURT: Okay. All right. Good news for  
2 Mr. McKinney. We're two jurors short.

3 MR. McKINNEY: Hallelujah.

4 THE COURT: Yes, sir. Go ahead.

09:07 5 MR. HEDGES: Judge, in closing arguments, do you allow  
6 video clips from a witness who only testified by video to be  
7 used, the clips --

8 THE COURT: Yes.

9 MR. HEDGES: -- themselves to be used in closing?

09:07 10 THE COURT: I do.

11 MR. HEDGES: Thank you.

12 THE COURT: One thing on this -- I wish Mr. McKinney  
13 was here, but please relay it. I know this is a very emotional  
14 part of the case. I know feelings are running very high. But  
09:07 15 we are going to maintain our professionalism. I don't want  
16 voices raised, and I most certainly do not want sidebars loud  
17 enough for the jury to hear.

18 I understand all the variables at play; but in  
19 this courtroom nobody acts rudely or disrespectfully toward  
09:07 20 anybody else and no one seeks unfair advantage by stage  
21 whispering that the jury can hear.

22 MR. KELLY: Your Honor, I have a question just brought  
23 to my attention. Did you say we're not having court this  
24 Friday?

09:07 25 THE COURT: Yes.

09:07 1 MR. KELLY: We have an expert about to get in the air.  
2 I -- I didn't know that.

3 THE COURT: Well, he's -- I didn't hear any objection  
4 to it.

09:08 5 MR. ESTEFAN: No, no. But I didn't know this was  
6 tomorrow. I thought it was going to be next week.

7 THE COURT: Well --

8 MR. KELLY: I have a doc- -- I have two doctors,  
9 actually, who were planning to testify tomorrow. One of them  
09:08 10 is coming from out of town, your Honor. He's our -- our  
11 expert. I don't know when we --

12 THE COURT: Can you -- can you reach him by phone?

13 MR. KELLY: Let's scramble, see if we can reach him.

14 *(Discussion off the record)*

09:08 15 MR. KELLY: Your Honor, we may not get him if we don't  
16 get him tomorrow.

17 THE COURT: Okay. And what -- how long is his  
18 testimony going to take -- will the testimony take?

19 MR. KELLY: He will probably take half a day, at -- at  
09:08 20 the most. I mean, I plan to be with him an hour and a half  
21 myself probably, at the max.

22 MR. McKINNEY: You're -- you're going to do the  
23 examination?

24 MR. KELLY: On Tackett?

09:08 25 MR. McKINNEY: No. Oh, on Tackett.

09:08 1 MR. ESTEFAN: Your Honor, we talk about --

2 MR. McKINNEY: Change of subject. I walked out of the  
3 room.

4 MR. KELLY: No, no, no. It's tomorrow's schedule.

09:08 5 And it flew right by me when it was first said. But I have an  
6 expert that, if he's not in the air, he's at the airport.

7 THE COURT: Where is he coming from?

8 MR. KELLY: Georgia.

9 MR. ESTEFAN: Atlanta.

09:09 10 *(Sotto voce discussion at bench with court staff)*

11 THE COURT: The problem is, I'm happy to work but  
12 we've told the jury they're off.

13 MS. LOEWE: I think they're okay with tomorrow. It's  
14 Friday -- next Friday was the one they were most concerned  
09:09 15 with.

16 THE COURT: I'll ask them about it. Let's see if I  
17 can solve the problem that way.

18 MR. KELLY: Thank you, your Honor.

19 MR. McKINNEY: Along the lines of the July 4th  
09:09 20 weekend, your Honor, is it the Court's plan to start up Tuesday  
21 morning, July the 5th, which would make July the 4th a travel  
22 day for the jury or --

23 THE COURT: They want the whole weekend.

24 MR. McKINNEY: Well, that's what I was wondering,  
09:09 25 whether they would -- whether you were going to give them a

09:09 1 half a day Tuesday --

2 THE COURT: If they ask for it. But I'm not going  
3 to -- I'm not going to raise it on my own.

4 MR. McKINNEY: Okay.

09:09 5 THE COURT: Okay. The jury is here. Is everybody  
6 ready?

7 MR. ESTEFAN: Yes, your Honor.

8 THE COURT: Okay.

9 *(Jury present)*

09:11 10 THE COURT: Thank you. Please be seated.

11 Ladies and gentlemen, a couple of points. One, I  
12 understand at least one of you is not feeling well today. I  
13 want that juror, and any other juror who is having health  
14 issues, to feel free to leave the jury box without seeking my  
09:11 15 permission if things turn worse. We can then decide whether  
16 that juror wants to go home and be excused from the jury  
17 permanently or just needs a few minutes. And believe me, I do  
18 understand health -- health issues trump other issues. I do  
19 understand that.

09:12 20 Secondly, I had -- I had thought that we could  
21 take tomorrow off -- at least you can -- so I could do other  
22 work. And I think the judge dropped the ball on this. Somehow  
23 it was not communicated to the attorneys that Friday was an off  
24 day, and we have a doctor flying in from out of state to  
09:12 25 testify tomorrow. Could you work -- could you work, say, from

09:12 1 8:30 to noon tomorrow? Can everybody do that?

2 Okay. That's what we'll plan on doing. And I  
3 apologize to all within the sound of my voice for my omission.

4 Okay. You ready to call your next witness?

09:12 5 MR. ESTEFAN: I am, your Honor. At this time,  
6 plaintiff would call Mr. Charles Bortz to the stand.

7 THE COURT: Mr. Bortz.

8 Let's see how things are over here. We have  
9 water and a mountain of exhibits.

09:12 10 Mr. Bortz, Mrs. Loewe will administer the oath.

11 MS. LOEWE: Do you solemnly swear the testimony you're  
12 about to give in the matter now before the Court will be the  
13 truth, the whole truth, and nothing but the truth?

14 THE WITNESS: I do.

09:13 15 THE COURT: Please have your seat there, and try to do  
16 the best you can about speaking into the mic directly. We've  
17 had some problems with it.

18 THE WITNESS: Yes, your Honor.

19 THE COURT: You -- you may inquire.

09:13 20 MR. ESTEFAN: Thank you, your Honor.

21 **CHARLES BORTZ, DULY SWORN, TESTIFIED:**

22 **DIRECT EXAMINATION**

23 BY MR. ESTEFAN:

24 Q. Good morning, Mr. Bortz.

09:13 25 A. Good morning.

09:13

1 Q. Would you state your name, please, sir?

2 A. Charles David Bortz.

3 Q. Mr. Bortz, you applied for a job with KBR in February or  
4 March of 2005?

09:13

5 A. I believe that's correct, sir.

6 Q. And you came to Houston and went through the orientation  
7 program at Greenspoint Mall?

8 A. Yes, sir.

09:13

9 Q. And I believe that you left Houston and went to Camp Hope  
10 in the Green Zone to work for KBR. Is that right?

11 A. Yes, sir.

12 Q. While you were at the orientation, you learned about KBR's  
13 rules and policies?

14 A. Yes, sir.

09:13

15 Q. And KBR gave you, in fact, its Code of Business Conduct.  
16 You -- you got that, didn't you?

17 A. If you're talking about a handbook, I believe they gave us  
18 a small paperback handbook.

09:13

19 Q. Yes, sir. It's -- I think we've seen that. It's either a  
20 pamphlet -- there's a little pamphlet, and then there's also a  
21 bigger book. Did you get both of those?

22 A. I believe I got a pamphlet. I -- I don't recall the rest,  
23 sir.

09:14

24 Q. Okay. You arrived at Camp Hope, it was probably late  
25 March, early April, 2005. Is that about right?

09:14

1 A. Yes, sir.

2 Q. Okay. And you were assigned to live in Barracks 2?

3 A. I believe so.

4 Q. I need some help from you about Barracks 2 because I've not  
5 been to Barracks 2. When you go in, is it a long hallway with  
6 rooms on either side, like a dormitory?7 A. Well, I believe initially when you enter the building  
8 there's a foyer. And in my case, as you face the building, to  
9 the right side of the building -- it was a long building, not a  
10 wide building. So you would enter into the foyer. There would  
11 be a bathroom on the right, I believe; a stairwell directly in  
12 front; and then a doorway to a hallway, somewhat like what you  
13 described.

09:14

14 Q. Okay. So, on the first floor, if -- if I'm looking at this  
15 this way --

09:14

16 A. Uh-huh. Yes.

17 Q. -- and the rooms are facing you and me, the doors are, this  
18 way and this way -- in other words, the length of the -- the --  
19 of the barracks runs this way.

09:15

20 You said there was a bathroom downstairs?

21 A. Yes, sir.

22 Q. Is that one bathroom or two bathrooms downstairs?

23 A. I believe there's one bathroom on either side of the  
24 building, sir.

09:15

25 Q. So, was one the women's and one the men's?



09:15

1 A. To the better extent of my knowledge.

2 Q. Okay.

3 A. I had a bathroom directly outside my dormitory; so, I  
4 didn't really concern myself with the others.

09:15

5 Q. And you were on the first floor?

6 A. Yes, sir.

7 Q. Do you know if the second floor had bathrooms on it?

8 A. I believe so.

9 Q. Okay. The -- you have three male roommates in your room?

09:15

10 A. Yes, sir.

11 Q. And when you aren't working when you're there in Iraq, you  
12 have a lot of free time on your hands?

13 A. Some days, yes.

14 Q. And I recognize that you are, as a fireman, potentially on  
15 call but only when the department got overwhelmed?

09:15

16 A. That's fair to say, yes.

17 Q. Okay. So, when you are not working, you and the other KBR  
18 employees are not allowed to leave the Green Zone. Is that  
19 true?

09:16

20 A. Well, to the better extent of my knowledge, we never left  
21 the Green Zone at all.

22 Q. Right. So, but what I mean is, when you have all this free  
23 time, you have to find a way to occupy it. And, so, you, for  
24 example, would go to your room and play video games.

09:16

25 A. Yes, at times.

09:16

1 Q. Okay. Go to the gym and work out.

2 A. Yes, sir.

3 Q. Might have social get-togethers where you drink alcohol  
4 with friends.

09:16

5 A. On occasion.

6 Q. And you met -- you meet a woman there while you're at -- at  
7 Camp Hope, named Beneta Brumatti?

8 A. Yes, sir.

9 Q. And she becomes your girlfriend?

09:16

10 A. Yes, sir.

11 Q. Your relationship with her becomes intimate?

12 A. Yes, sir.

13 Q. And -- and, Mr. Bortz, I want to tell you up front, I -- I  
14 apologize because we're going to have to get into some stuff  
15 that's necessary. All right?

09:16

16 A. I understand.

17 Q. And I'm sorry about that, and I'll try not to get any more  
18 sensitive than I have to.19 THE COURT: And we all agree on that. We all agree on  
20 that.

09:17

21 THE WITNESS: I understand.

22 BY MR. ESTEFAN:

23 Q. You -- you spend the night with Beneta in her room?

24 A. On occasion, yes.

09:17

25 Q. And you know that KBR has a policy against that?

09:17 1 A. Cohabitation?

2 Q. Yes, sir.

3 A. Yes, I do.

4 THE COURT: Is it a limit on cohabitation alone, or is  
09:17 5 it a limit in -- is the limit on any kind of sexual  
6 relationship between two employees?

7 THE WITNESS: Your Honor, to the better extent of my  
8 knowledge, the limit on cohabitation was that we weren't to  
9 live and share quarters.

09:17 10 THE COURT: But you could be in somebody else's -- the  
11 room of someone of the opposite sex, and that was not in  
12 violation of the policy?

13 THE WITNESS: To the better extent of my knowledge,  
14 no, sir.

09:17 15 THE COURT: And likewise, sexual intercourse would not  
16 be either. Is that correct?

17 THE WITNESS: I'm not actually sure what the policy --

18 THE COURT: Okay.

19 THE WITNESS: -- prescribed policy on that was.

09:17 20 BY MR. ESTEFAN:

21 Q. Well, unless it was overnight. I mean, in other words, you  
22 could go to someone's room; but you're not supposed to spend  
23 the night over there?

24 A. To the better extent of my knowledge, yes.

09:18 25 Q. All right. Do you know who Kara Hall is?

09:18

1 A. No, sir.

2 Q. Okay. He told us that a violation of that policy, spending  
3 the night in someone else's room, is a termination offense.  
4 Did you know that?

09:18

5 A. No, sir.

6 Q. Well, you knew that KBR didn't enforce that policy against  
7 you, for example, right?

8 A. Against me, no, sir.

9 Q. Or anyone else?

09:18

10 A. I don't have any recollection -- any other past judgments,  
11 I actually don't know.

12 Q. So, did you figure it was okay for you or anyone else to  
13 break that rule?

14 A. I wouldn't say that I figured it was okay, but I didn't  
15 think that it was going to cause any major grief.

09:18

16 Q. Right. You never got punished for it, and -- and you  
17 figured you never would?

18 A. True. Yes.

19 Q. In July of 2005, your girlfriend Beneta -- I hope I'm  
20 pronouncing that right.

09:18

21 A. Yes, sir.

22 Q. -- goes on vacation. I guess you call that "leave" or  
23 R & R?

24 A. Yes.

09:18

25 Q. And, so, do you remember when in July that was that she

09:19 1 left to go to R & R?

2 A. No, sir.

3 Q. Okay. Well, on July 25th, 2005, you meet Jamie Leigh Jones

4 that day, right?

09:19 5 A. Yes, sir.

6 Q. That's her first day in-country, in -- in the base, on --

7 on -- in Camp Hope, right?

8 A. Yes, sir.

9 Q. And the way that you meet Jamie is you're in your room with

09:19 10 at least, I think, one other of your roommates and you're

11 playing video games?

12 A. Yes, sir.

13 Q. And Sara Simco and Pete Arroyo bring her by there?

14 A. Yes, sir.

09:19 15 Q. And introduce you to her and her to you. And they're

16 showing her around the camp, right?

17 A. Yes, sir.

18 Q. And you thought that she was pretty?

19 A. Yes, sir.

09:19 20 Q. And you were attracted to her when you first met her?

21 A. I would say she was attractive, yes.

22 Q. Now, if you're -- excuse me. If you're at the end of the

23 hall, on the first floor, right by a bathroom, is Jamie's

24 room -- she's -- she's in Room 201. Is she directly above you

09:20 25 or across the other end of the barracks and above you?

09:20

1 A. I believe it was directly above.

2 Q. Okay. And how many floors did this barracks have?

3 A. Two.

4 Q. You've said it had three.

09:20

5 A. I said I thought it had three, sir; and I was incorrect, in  
6 fact.

7 Q. And actually, it wasn't just one time you said you thought  
8 it was three. It was more than once you said it was a  
9 three-story building, right?

09:20

10 A. That's true.

11 Q. Another time that you see Jamie is as she's going to the  
12 women's restroom, which is on the first floor. Remember that?

13 A. Yes, sir.

14 Q. And you say something to her like, "You shouldn't wear a  
15 bathrobe when you go to the women's room -- restroom."

09:20

16 And -- and she wasn't wearing a bathrobe, was  
17 she?

18 A. Sir, I don't recall making that remark. I recall it from  
19 reading my statement. And I'm sure I made it in jest, but I do  
20 not recall that remark.

09:20

21 Q. Okay. Well, when did you make your statement?

22 A. My first statement? My initial statement?

23 Q. Yes, sir.

24 A. To the State Department to -- what would be the next day,  
25 the very next day, I believe.

09:20

09:21 1 Q. So, about July 28th or 29th. Is that correct?

2 A. The 28th, I believe, was my first statement. I'm not  
3 entirely sure of the date. Sorry.

4 Q. That's fine.

09:21 5 And in that statement you said that you made the  
6 statement I just told you about, which is, "You should -- you  
7 shouldn't wear a bathrobe when you go to the bathroom"?

8 A. I believe in the statement it says that. I'm sure I made  
9 it in jest. And I wasn't exactly sure about it. I don't  
09:21 10 actually recall making the statement. I'm sorry.

11 Q. Okay. Well, you also said that, "The guys here are weird."  
12 You told Jamie that, didn't you?

13 A. (Nodding head).

14 THE COURT: You need to speak up, sir.

09:21 15 A. Yes, sir, to the better extent of my knowledge. But once  
16 again, I -- I don't remember saying it. It's just something I  
17 read in my statement.

18 BY MR. ESTEFAN:

19 Q. Okay.

09:21 20 A. And I'm sure I made it in jest.

21 Q. Well, when -- we asked you about that during your  
22 deposition when we met, and you said you had no reason to  
23 disagree that you made that statement because it's in the  
24 written statement.

09:21 25 A. I understand. I agree.

09:21 1 Q. So you stick by that now?

2 A. Whatever is in my statement, I agree with, sir.

3 Q. Except the one comment we're going to get to in a minute.

4 To be fair to you, Mr. Bortz, there was one

09:22 5 comment that you did correct and you told us about? Remember  
6 that?

7 A. And the third floor of the barracks, which I honestly just  
8 did not recollect.

9 Q. Okay. And -- so, between these two barracks, Barracks 2

09:22 10 and Barracks 1, there's some space between them, right?

11 A. Yes, sir.

12 Q. And there's a -- I don't know, you-all call them "jersey  
13 barriers" or something?

14 A. Yes, sir.

09:22 15 Q. What are "jersey barriers"?

16 A. I don't know if anybody's familiar with military bases.

17 But the best way to describe it is security for traffic. It's  
18 the concrete barrier designed to -- usually when you see a car  
19 going in a military installation, there would be a bobbing and  
09:22 20 weaving between them, like kind of a serpentine. It keeps you  
21 from going in a straight line.

22 Q. Okay. And, so, is it -- is it like what we see on the  
23 highway, that divides one lane of traffic going one way from  
24 another?

09:22 25 A. Yes, sir. Yes, sir.



09:22 1 Q. Okay. The concrete barriers?

2 A. Yes, sir.

3 Q. And there's also a picnic table out there between these two

4 barracks, right?

09:22 5 A. Yes, sir, I believe so.

6 Q. I want to jump ahead a little bit to the evening of

7 Wednesday, July 27th, 2005. Okay?

8 A. Yes, sir.

9 Q. You with me?

09:23 10 A. Yes, sir.

11 Q. And on that evening, you and several other people are out

12 at that picnic table, or around there?

13 A. Yes, sir.

14 Q. Right?

09:23 15 A. Yes, sir.

16 Q. And you-all are having a little get-together, and I believe

17 you're having drinks?

18 A. Yes, sir.

19 Q. And the occasion, I think, is that Matt Ryan, who is a

09:23 20 firefighter, is going on leave?

21 A. Yes, sir. I spent time with my friend before he departed

22 for leave.

23 Q. Right. And Matt's your friend; and he's also a

24 firefighter, right?

09:23 25 A. Yes, sir.

09:23

1 Q. And, so, you guys work together?

2 A. Yes, sir.

3 Q. Okay. And he's going on vacation to Dubai?

4 A. I don't recall.

09:23

5 Q. Okay.

6 A. I know that when we go on R & R, sometimes people would lay  
7 over for a day, maybe two days, in Dubai before they went home.

8 But I don't remember what Matt's intentions were specifically.

9 Q. Okay. People are at this gathering, drinking and

09:23

10 socializing, right?

11 A. Yes, sir.

12 Q. And you see Jamie outside. As you're sitting on this -- on

13 or near this picnic table, you look over and you see Jamie

14 Jones?

09:23

15 A. Yes, sir.

16 Q. And she's standing outside the barracks?

17 A. Yes, sir.

18 Q. She's using a cell phone?

19 A. Yes, sir.

09:24

20 Q. And you walk over to her, and you invite her to the  
21 gathering?

22 A. I believe so.

23 Q. When you walk up to her, do you know that she's talking on  
24 the phone with Pete Arroyo?

09:24

25 A. No, sir, not that I can recall.

09:24 1 Q. Well, do you hear her say into the phone, "Pete, there are  
2 some firemen here and they're inviting me -- they want me to  
3 come have drinks with them"?

4 A. No, I do not recall that, sir.

09:24 5 Q. You don't -- you didn't hear her say that?

6 A. I don't recall.

7 Q. Okay. Well, Jamie comes and joins the group. And she  
8 stays there for a little while, and then she leaves the group.  
9 And she leaves alone, right?

09:24 10 A. Correct, to the better extent of my knowledge.

11 Q. Now, later in the evening -- and I think you thought at  
12 that point she had gone to her room. Is that fair?

13 A. It's fair to say, but I don't recall.

14 Q. Okay. You didn't see which direction she went when she  
09:24 15 left the gathering?

16 A. I do not recall.

17 Q. Okay. Well, later in the evening Jamie calls you from her  
18 room and she's wanting to find out if -- if anybody is still  
19 down there?

09:25 20 A. I believe that's true.

21 Q. Okay. And this time when she -- you say, "Yeah, we're all  
22 here. Come on back down." And so she does. Remember that?  
23 She comes back to the gathering?

24 A. I remember she comes back, yes.

09:25 25 Q. And she's dressed a little differently than she was the

09:25

1 last time you saw her, wasn't she?

2 A. I don't recall.

3 Q. Wearing sweatpants and a T-shirt, pullover-shirt type  
4 thing?

09:25

5 A. I believe that's in my statement, sir, yes, I can recall  
6 that.

7 Q. All right. And she brings with her a cup, a plastic cup?

8 A. Yes, sir.

9 Q. And it's got Baileys Irish Cream in it?

09:25

10 A. Yes, sir.

11 Q. But it's not full, is it?

12 A. I don't recall, sir.

13 Q. You know what Baileys Irish Cream is?

14 A. I know it's a liquor. I don't know exactly what kind of  
15 liquor it is that they put in it or anything like that.

09:25

16 Q. Okay. Did you -- have you ever had it before, before you  
17 met Jamie that night?

18 A. I believe so. I believe I've tasted it before.

19 Q. Okay. So, you actually took some of Jamie's drink and  
20 drank from it, right, that night?

09:25

21 A. I believe at some point I did take a drink from it.

22 Q. Yes, sir. That evening.

23 A. I believe so.

24 Q. If you remember as you're looking in that glass, are you  
25 and Jamie sitting next to each other?

09:26

09:26

1 A. I believe so.

2 Q. And you look in her glass. Do you see how much Baileys is  
3 in there?

4 A. No, sir, I don't recall.

09:26

5 Q. Okay. Did you drink all of it?

6 A. No, sir.

7 Q. Did Jamie drink all of it?

8 A. No, sir.

9 Q. How much did you see Jamie drink while she was with you?

09:26

10 A. I don't recall how much was in the glass, so I don't recall  
11 how much specifically she drank. I had a taste, I recall.  
12 Other than that, I don't -- I really don't remember.

13 Q. Okay. Well, then you made a comment to Jamie something  
14 along the lines of, "Hey, Matt Ryan makes really good drinks."

09:26

15 Do you remember that?

16 A. It's possible. I don't remember making that remark  
17 specifically, no.

18 Q. Okay. And you ask her, "Hey, you want a drink? Matt will  
19 make you one." Do you remember that?

09:26

20 A. It's possible. But I don't specifically remember that  
21 remark.

22 Q. Okay. And then Matt leaves to go make the drink?

23 A. (Nodding head).

24 Q. And I -- I know you acknowledged that. And I didn't ask  
25 you a question yet, so "uh-huh" is okay.

09:26

09:26 1 But -- but he comes back; and he's got the drink  
2 for Jamie, right?

3 A. All right. Yes.

4 Q. Do you remember?

09:27 5 A. I remember Matt bringing a drink, yes.

6 Q. Okay. And as he hands the drink to Jamie, he says, "Don't  
7 worry. I've saved all my ruffies for Dubai." You heard that  
8 comment?

9 A. I recall from my statement, but I don't recall the --  
09:27 10 exactly the remark was made. I know there was a reference to  
11 that, but I -- I cannot remember exactly how it was said.

12 Q. Yes, sir. And here's where I want to go back and clear up.  
13 Because in your written statement I think that it was written  
14 that you had made that statement about the ruffies. And you  
09:27 15 didn't make that statement?

16 A. I believe that was a transcription of my statement and  
17 someone, like, miswrote.

18 Q. Yes, sir. And in fairness to you, you didn't make the  
19 ruffies comment. That was -- that comment originally came from  
09:27 20 Matt Ryan?

21 A. I did not make that comment, sir, no.

22 Q. But you heard Matt make it?

23 A. I believe so, sir.

24 Q. All right. The gathering ends.

09:27 25 A. (Nodding head).

09:27 1 Q. And there's just men around. And Jamie is the only woman  
2 still left there, right, at the end of the night? There's  
3 several men, and then there's Jamie?

4 A. I believe so.

09:28 5 Q. Right. And you and Jamie go back up to her room. True?

6 A. Yes, sir.

7 Q. And Jamie seems to you a little tipsy or buzzed or drunk?

8 A. She seems to have her faculties, sir.

9 Q. Is she buzzed or drunk at all?

09:28 10 A. Not to my -- I couldn't tell visibly. I couldn't tell by  
11 her speech or the way she carried herself. She seemed fine.

12 Q. All right. Mr. Bortz, you and Jamie go into her room and  
13 begin getting intimate?

14 A. Yes, sir.

09:28 15 Q. In fact, you described the sex between you and Jamie as  
16 "slow and gentle"?

17 A. Yes, sir.

18 Q. You say that the bed that you have sex with Jamie in has  
19 sheets on it?

09:28 20 A. To the better extent of my knowledge.

21 Q. I mean, you would remember if it was a -- an unmade bed or  
22 just a mattress, wouldn't you?

23 A. Well, sir, I remember that there was one unmade bed and one  
24 made bed. And when I woke up, I woke up on the bed that had  
09:29 25 the sheets on it. And I believe that was on the bottom bunk.

09:29 1 Q. Well, have you ever said that the bed that you had sex in  
2 had sheets on it?

3 A. I honestly do not recall, sir. I would have to read my  
4 statement again.

09:29 5 Q. Okay.

6 A. I'm sorry.

7 Q. Well, I -- I just want to clear this up.

8 MR. ESTEFAN: Your Honor, may I approach the witness?

9 THE COURT: You may.

09:29 10 BY MR. ESTEFAN:

11 Q. Mr. Bortz?

12 A. Sir?

13 Q. I would like to show you your deposition. Do you remember  
14 having it taken?

09:29 15 A. Yes, sir.

16 MR. McKINNEY: Could I have, please, a page and line  
17 reference --

18 MR. ESTEFAN: Yes, sir. I'm going to Page --

19 MR. McKINNEY: -- and just a moment to go to it?

09:29 20 MR. ESTEFAN: Page 94, Lines 15 through 17,  
21 Mr. McKinney.

22 MR. McKINNEY: Bear with me half a second.

23 BY MR. ESTEFAN:

09:30 24 Q. And you can hold that, Mr. Bortz, if you like. And right  
25 here, question and answer. And you don't have to read it out



09:30

1 loud.

2 A. I understand.

3 MR. ESTEFAN: You ready?

4 MR. MCKINNEY: Fire away.

09:30

5 BY MR. ESTEFAN:

6 Q. Okay. The question reads: "Were there sheets on the bed  
7 when you were having intercourse?"

8 And your answer is?

9 A. "Yes."

09:30

10 MR. ESTEFAN: May I have those pictures, Todd?

11 These are already in, I think. I don't know the  
12 exhibit numbers, but --

13 MR. MCKINNEY: They are.

14 MS. VORPAHL: Yes, they're fine.

09:30

15 MR. ESTEFAN: Any objection?

16 MR. MCKINNEY: No, no objection.

17 BY MR. ESTEFAN:

18 Q. Mr. Bortz, I want to show you -- try to work this out as  
19 best I can -- photographs that I will tell you are of Jamie's  
20 room.

09:30

21 THE COURT: Can the jury all see that?

22 MR. ESTEFAN: I don't know. Can you?

23 THE COURT: We --

24 MR. ESTEFAN: Can you see that?

09:30

25 THE COURT: We can see it on the screen.

09:30

1 MR. ESTEFAN: Okay. That --

2 THE COURT: Okay. I guess that's the best we can do.

3 Okay.

4 BY MR. ESTEFAN:

09:30

5 Q. That's half the room.

6 And then you see these blankets on the end of the  
7 bed here?

8 A. Yes, sir.

9 Q. Here's the other half of the room.

09:31

10 A. Yes, sir.

11 Q. Okay?

12 So, I've got it kind of oriented, the way the  
13 room looks, if I'm standing over near the doorway over here,  
14 these beds are on that wall.

09:31

15 A. Yes, sir.

16 Q. And these bunk beds are on this wall over here.

17 A. Yes, sir.

18 Q. Is that fair?

19 A. Fair, sir.

09:31

20 Q. And you see that only one bed has any sheets on it?

21 A. Yes, sir.

22 Q. And the other three don't.

23 A. Yes, sir.

24 Q. Is that fair?

09:31

25 A. Yes, sir.

09:31 1 Q. Okay. Now, you said that the sex that you and Jamie had  
2 was either on a bottom bunk or on an open bed?

3 A. Yes, sir.

4 Q. So, we got a little issue with where that was, because we  
09:31 5 know that it was a top bunk by looking at that photo, right?

6 A. Yes, sir.

7 Q. How do you explain that discrepancy?

8 A. The only thing I can tell you is that it's been six years  
9 since this happened, and a lot of things are very fuzzy to me.  
09:32 10 I read my statements and see what I -- I, you know, previously  
11 said, like to the State Department and so on; but I cannot  
12 remember every little detail. I'm having a hard time with even  
13 some of the smallest ones.

14 Q. That's understandable. It's hard to remember every little  
09:32 15 detail, isn't it?

16 A. It's very difficult. And I'm trying.

17 Q. Yes, sir. And I appreciate you trying. I do.

18 There's no open bed -- I mean, these are -- the  
19 beds we're looking at in these photos are the only beds in her  
09:32 20 room. Is that true?

21 A. That I can see, yes, sir.

22 Q. I mean, from your memory?

23 *(Sotto voce discussion at bench with court staff)*

24 THE COURT: Okay. Let's just stop for a moment.

09:32 25 Okay.

09:32

1 MR. ESTEFAN: We have to take a break.

2 THE COURT: We have to take a break. One of the  
3 jurors is unwell this morning. We'll take a break and maybe --  
4 and I'll get everybody back if and when she's able to continue.  
5 If she's not, we'll just make a decision as to whether to  
6 release her as a juror, and we'll proceed with whoever remains.

09:32

7 MR. ESTEFAN: Yes, your Honor.

8 THE COURT: Let's give her -- if she wants to stay,  
9 let's give her a chance.

09:33

10 MR. ESTEFAN: Yes, sir.

11 *(Recess was taken from 9:32 a.m. to 9:56 a.m.)*

12 *(Jury not present)*

13 THE COURT: Okay. Ladies and gentlemen, the report  
14 from the juror is she's been fighting a cold. And I guess some  
15 of the medicines she's ingested has made her stomach upset.  
16 She very much wants to stay on the jury. And she proposed --  
17 since she feels better lying down, she's proposed, could she  
18 lie down in the ante office there and put the phone -- put the  
19 phone -- earphones on and try to listen that way.

09:55

20 She's not getting better right away, though. So  
21 we have to make a decision. We could -- we could release her,  
22 which is not what she wants. That would give us 10 jurors,  
23 still a statutorily proper number.

24 We could send her home today and come back  
25 tomorrow. But I know Mr. Bortz, plaintiffs wanted to do this

09:56

09:56 1 today.

2 I doubt this is the kind of thing that will keep  
3 her out till Monday, but it could keep her out tomorrow. I  
4 don't know.

09:56 5 MR. HEDGES: I would suggest trying what you  
6 mentioned, let her lie down and listen by headphones. And if  
7 she just keeps getting worse, then you're going to have to cut  
8 her loose, I think.

9 THE COURT: Yeah. I really don't want to stop the  
09:57 10 trial.

11 MR. McKINNEY: Judge, I -- we -- I don't think we can,  
12 given witness schedules. My client is --

13 THE COURT: Is everybody okay with letting her try to  
14 lie in whatever position she wants to?

09:57 15 MR. ESTEFAN: Absolutely.

16 THE COURT: I see everybody's head nodding. So, we'll  
17 do that.

18 MR. ESTEFAN: As long as we can accommodate her.

19 MR. HEDGES: I believe Ms. Loewe said that the jury  
09:57 20 would prefer, if they come in tomorrow, to go ahead and do a  
21 full day?

22 THE COURT: That's the other thing I was going to take  
23 up. Yeah, they'd rather do a whole day. And I'm going to try  
24 to clear my schedule so I can get a whole day. So --

09:57 25 MR. HEDGES: I mean, I have a -- my cosmetic surgeon

09:57 1 expert is scheduled for Monday afternoon. If you can imagine,  
2 getting those people to schedule something for you is near  
3 impossible. I need one of their cosmetic surgeons, Dr. Lahiri,  
4 to testify before I put on --

09:57 5 THE COURT: Okay.

6 MR. HEDGES: -- Rose, because Rose's testimony -- and  
7 I think they'd let her go for tomorrow when they heard we  
8 weren't coming tomorrow, but we're trying to get her --

9 MR. ESTEFAN: We'll try to get her back.

09:57 10 THE COURT: All right. I hope he can help me on some  
11 cosmetic surgery.

12 MR. MCKINNEY: Hardly necessary, your Honor.

13 MS. VORPAHL: All of us.

14 MR. MCKINNEY: On the subject of a full day tomorrow,  
09:57 15 if we could stop in the 4:00, 4:30 time range.

16 THE COURT: Come in 8:30 to 4:30, that will be eight  
17 hours, except for lunch. We can do that.

18 MR. ESTEFAN: Yes, sir.

19 THE COURT: All right.

09:58 20 MR. KELLY: Just so the Court is aware, your Honor, we  
21 are trying our best to get Dr. Lahiri back on. Our fear is  
22 that when she was released she may have started scheduling  
23 patients. So that's been --

24 THE COURT: All right. All right.

09:58 25 Ms. Loewe, would you communicate our message to

09:58 1 the juror? If she wants to lie down and try to listen that  
2 way, we're happy to accommodate her.

3 MS. LOEWE: I'm trying to see if our headphones reach  
4 that far.

09:58 5 THE COURT: Are they not working?

6 MS. LOEWE: Well, they do till I get this far.

7 *(Recess taken from 9:58 a.m. to 10:05 a.m.)*

8 *(Jury present)*

9 THE COURT: Members of the jury, please be seated.

10 Ladies and gentlemen, I thank you for your  
11 patience. And let me just say I've received your message you  
12 wish to work a full day tomorrow, and we will do so. Let me  
13 just say that I think it's a really noble act. You would get  
14 the same amount of money working a half day that you'll get for  
15 working a full day. Your sense of sacrifice, your sense of  
16 fairness is -- has made a deep impression on me. It really  
17 has.

18 All right. You may proceed.

19 MR. ESTEFAN: Thank you, your Honor.

10:05 20 BY MR. ESTEFAN:

21 Q. Mr. Bortz, we were talking about the room and the  
22 intimacies between you and Ms. Jones. Do you remember that?

23 A. Yes, sir.

24 Q. And again, just to rewind just a little bit --

10:06 25 A. Yes, sir.

10:06 1 Q. -- you've described the intimacy as slow and gentle?

2 A. Yes, sir.

3 Q. And you did not have anal sex with Jamie?

4 A. Not at any time, sir.

10:06 5 Q. And you did not ever ejaculate?

6 A. No, sir.

7 Q. There was no rough sex between you and Jamie?

8 A. No, sir.

9 Q. You didn't grab her wrists?

10:06 10 A. No, sir.

11 Q. You didn't open her thighs forcefully with your hands?

12 A. Absolutely not.

13 Q. You didn't injure her breasts in any way?

14 A. No, sir.

10:06 15 Q. After the intimacy between you and Jamie, you fall asleep  
16 and spend the night in her room?

17 A. Yes, sir.

18 Q. No one else is in the room that evening, other than you and  
19 Jamie?

10:06 20 A. Yes, sir, that's correct.

21 THE COURT: At any time during the evening were there  
22 others there?

23 THE WITNESS: No, sir. Nor was anyone welcome there.  
24 No one knew I was up there, even, as far as I know.

10:07 25 BY MR. ESTEFAN:



10:07 1 Q. Let's move to the next morning, Mr. Bortz. You wake up  
2 before Jamie does?  
3 A. Yes, sir.  
4 Q. And when you woke up, I believe you said the alarm woke you  
10:07 5 up?  
6 A. Yes, sir.  
7 Q. And Jamie had asked you to set the alarm?  
8 A. Yes, sir.  
9 Q. Because she had to be at work that morning?  
10:07 10 A. Yes, sir.  
11 Q. You had to be at work a little later that morning?  
12 A. Yes, sir.  
13 Q. And she was hard to wake up?  
14 A. She didn't want to get up, sir. She wanted to sleep  
10:07 15 longer.  
16 Q. Right. She was hard to arouse, though, right? That's fair  
17 to say, isn't it?  
18 A. Yes, sir, it's fair to say.  
19 Q. In fact, you tried more than once to wake her up and you  
10:07 20 couldn't get her up. Isn't that true?  
21 A. I did try later on.  
22 Q. Yes. Before she gets out of bed, you leave the room?  
23 A. Yes, sir.  
24 Q. And you went to the men's room --  
10:07 25 A. Yes, sir.

10:07 1 Q. -- the men's restroom. And when you get back in the room,  
2 she's not there?  
3 A. Correct.  
4 Q. So, she comes back to her room and walks in; and as she  
10:07 5 walks into the room, where are you in this room?  
6 A. To be honest with you, sir, I can't recall exactly where I  
7 was. I know at that time, from reading my statement, that I  
8 was getting dressed, like, putting my shoes and socks on and  
9 whatnot.  
10:08 10 Q. Do you recall whether you were on that bunk over there or  
11 this bunk over here or neither of the two?  
12 A. I don't recall, sir. I honestly don't.  
13 Q. What you do recall is her asking you the question --  
14 A. Yes, sir.  
10:08 15 Q. -- "Did we have sex last night?"  
16 A. Yes, sir.  
17 Q. And your answer to that was, "Yes, we did"?  
18 A. Yes, sir.  
19 Q. And, then, you recall her asking the next question, which  
10:08 20 is, "Was it protected?"  
21 A. Yes.  
22 Q. And you said, "No, it wasn't"?  
23 A. Correct.  
24 Q. After those questions are asked and answered, you help  
10:08 25 Jamie get dressed?

10:08 1 A. Help her get dressed, sir? No.

2 Q. You help her with her makeup?

3 A. Yes. Well, I didn't assist her with applying her makeup.

4 I sat there and held the mirror for her.

10:08 5 Q. Okay. Do you know what the mirror looks like?

6 A. I don't recall, no.

7 Q. Is it a big mirror or little mirror? Is it round or

8 square?

9 A. I believe it was a smaller mirror. I don't remember if it

10:09 10 was round or square. I know it wasn't something that you would

11 have on your wall.

12 Q. Is it something you might hold, like the size of this?

13 A. I don't recall. I honestly don't, sir.

14 Q. Is it that mirror that's sitting right there on the bed,

10:09 15 the yellow-framed mirror right there?

16 A. It's entirely possible, sir; but I don't remember.

17 Q. You said earlier that you gave a statement, and you said

18 something about your first statement. Was that July the 28th?

19 Was it that day?

10:09 20 A. Sir, I believe it -- yes, I believe it was July 28th.

21 I have a statement in front of me, if that's all right with

22 you.

23 Q. Of course, it's all right, yes, sir.

24 A. This right here says the 30th of July, and I don't know if

10:09 25 this is the first or second. So, I'm not entirely sure of the

10:09 1 dates; but I thought that it was either the same day or the  
2 next day after the incident that I was in for questioning by  
3 the State Department.

4 Q. Okay. And just so we know, the reason the State Department  
10:10 5 is questioning you is because they're KBR's client in the Green  
6 Zone, at Camp Hope, right?

7 A. That's not something I can confirm or deny, sir.

8 Q. Okay. But they're looking into it, and they're questioning  
9 you?

10:10 10 A. (Nodding head.)

11 Q. Remember that?

12 A. Yes, sir. Yes.

13 Q. And during that statement, you were asked some questions?

14 A. Yes, sir.

10:10 15 Q. Now, was it that statement or a later statement when you --  
16 before you gave it you wanted to have KBR security with you?

17 A. That was, I believe, the initial statement, when I asked  
18 Mr. Goodgine to be with me.

19 Q. That would be William Goodgine?

10:10 20 A. Yes.

21 Q. So, the first time you were asked for the statement -- not  
22 when you gave it; but the first time you were asked for the  
23 statement, you declined?

24 A. No, sir, I did not.

10:10 25 Q. Okay. You wanted to have KBR security there before you

10:10

1 gave the statement?

2 A. Yeah. I didn't feel comfortable giving the statement,  
3 because I didn't understand who these people were or what their  
4 goal was. I just -- I felt slightly uncomfortable; so, it made  
10:11 5 me feel more comfortable to have him in there.

6 Q. Okay. Do you recall after you -- going back to the room  
7 for a minute, walking out of the room with Jamie?

8 A. Yes, sir.

9 Q. Did you walk her to the bus stop?

10:11

10 A. Yes, sir.

11 Q. You watched her get on the bus?

12 A. I escorted her to the bus stop and kissed her good-bye and  
13 said good-bye and turned and walked away and assumed that she  
14 got on the bus. I was sure that she had gotten on the bus.

10:11

15 Q. Have you ever said that you watched her get on the bus?

16 A. I do not recall, sir. I can read my statement if you would  
17 like.

18 Q. Is it in your statement?

19 A. I don't recall, sir. I would have to look.

10:11

20 Q. Okay. Well, you can do that.

21 A. It doesn't state specifically that I actually saw or not,  
22 sir.

23 Q. Right. Have you ever testified that you kissed her and  
24 as -- and then she got on the bus and you watched her get on  
10:12 25 the bus?

10:12 1 A. I do not recall if I said I watched her get on the bus. I  
2 do not.

3 Q. All right. Well, I would like to refresh your  
4 recollection.

10:12 5 MR. ESTEFAN: Your Honor, may I approach?

6 THE COURT: You may.

7 MR. ESTEFAN: Thank you.

8 Page 109, counsel, beginning on Line 15.

9 BY MR. ESTEFAN:

10:12 10 Q. I'll let you read that, Mr. Bortz. You see right here on  
11 Line 15, the question is, "Did you wait for the bus with  
12 Jamie?"

13 And your answer is?

14 A. "Uh-huh."

10:12 15 Q. And you said you kissed her. And your answer is?

16 A. "Uh-huh."

17 Q. "Was that when she was getting on the bus?"

18 And your answer is?

19 A. "Yes, I did wait for the bus with her; and, yes, I did kiss  
10:12 20 her before she got on the bus."

21 Q. The question is, "Okay. Was she getting on the bus when  
22 you kissed her?"

23 And your answer is?

24 A. "You mean in the act of doing so while I did?"

10:12 25 Q. And the question is, "No. I mean, was -- did you kiss her

1 as she walked on the bus?"

2 And your answer is?

3 A. "Yeah."

4 Q. And then you said -- the followup to that is?

5 A. "As far as I recall."

6 Q. Right. And, so, the next question is, "So, you actually  
7 saw her get on the bus to go to work?"

8 And your answer is?

9 A. "Yes."

10 Q. Thank you, Mr. Bortz.

11 Now, going back for a minute to Sara Simco, you  
12 know Sara?

13 A. Yes.

14 Q. And you know her pretty well?

15 A. She's one of my best friends.

16 Q. In fact, she's such a good friend that you and Sara have  
17 spent the night together?

18 A. I would say only that we had spent the night together, but  
19 it has nothing to do with whether we're such good friends.

20 Q. Right. But, I mean -- and it's your testimony that you and  
21 Sara spent the night together but had no sexual relationship?

22 A. That's absolutely correct.

23 Q. Right. And Sara was the woman that brought Jamie by your  
24 room that first meeting that you had?

25 A. And Mr. Arroyo.

10:14 1 Q. And Mr. Arroyo, Pete Arroyo, true? Right?

2 A. Yes.

3 Q. Sara was actually leaving the country, and Jamie was her  
4 replacement. Is that right?

10:14 5 A. I don't know about that.

6 Q. Okay. Well --

7 A. I thought it's because she -- I thought she had months left  
8 before she left.

9 Q. Months before she left?

10:14 10 A. I don't recall hearing any remarks like that, no.

11 Q. Okay. Well, you do recall getting a phone call after  
12 this -- after Jamie was at the CSH, the army hospital, you got  
13 a call from Sara. You remember that?

14 A. Yes, sir.

10:14 15 Q. And that call was her telling you that, "Jamie is saying  
16 that you raped her." Do you remember that?

17 A. Yes, sir.

18 Q. Later on, your friend Sara called you after this lawsuit  
19 had been filed and she told you that there -- that you were  
10:15 20 being sued in this case. She told you that, right?

21 A. I don't recall her specifically saying that I was being  
22 sued in this case. I remember she would talk about it had come  
23 up.

24 Q. Right.

10:15 25 A. I know she called me and said that she had been contacted.



10:15 1 Q. Yeah. And your response to her was when you -- when she  
2 asked you or said to you that we were looking for you, she said  
3 your response was, "They don't know where I am, and I ain't  
4 saying." Wasn't that your response?

10:15 5 A. I believe it says that in the e-mail. Wasn't that an  
6 e-mail, sir?

7 Q. Yes, sir.

8 A. (Nodding head.)

9 Q. Mr. Bortz, I'm going to show you a picture that's been  
10:15 10 blown up.

11 MR. ESTEFAN: Counsel has all seen this.

12 Any objection? It's already in, I think.

13 MR. MCKINNEY: I realize, your Honor, that this  
14 photograph is in evidence. However, it is an anatomical  
10:16 15 depiction of a woman's private area, that has been addressed by  
16 experts in this case.

17 And I'm happy for my client to answer any  
18 relevant questions in this case, but I think it's beyond proper  
19 examination to ask any lay male to comment on female anatomy in  
10:16 20 trial. I just don't think it's right.

21 THE COURT: We're going to have to proceed question by  
22 question.

23 Tell me what your purpose is in doing this.

24 MR. ESTEFAN: Well, your Honor, I believe that  
10:16 25 Mr. Bortz testified that the -- several things that he's talked

1 about. He said he never grabbed her wrists, never grabbed her  
2 thighs, never had anal sex with her --

3 THE COURT: Okay.

4 MR. ESTEFAN: -- never -- and, so, all of this is  
5 documented on this; and I would like to ask him how -- if he  
6 has any explanation for how these marks got on Jamie.

7 THE COURT: I think we can proceed without a  
8 demonstrative on that. Tell him the anatomical parts about  
9 which you wish to ask and tell him -- and ask him what he can  
10 add to the story.

11 MR. ESTEFAN: I will, your Honor.

12 MR. MCKINNEY: And my issue is, one, your Honor, if  
13 you'll -- I don't mean to make a speaking objection, but I  
14 addressed the -- some of the aspects of that drawing, fissures  
15 and whatnot, with Dr. Scott yesterday; and it's really a  
16 question of medical and physical causation --

17 THE COURT: Okay. I think -- I understand your point,  
18 but I'm not going to cut Mr. Estefan off right now.

19 Do the best you can, sir. And if you don't know  
20 an answer, just say frankly you don't know an answer. That's  
21 fine.

22 THE WITNESS: I understand, your Honor.

23 BY MR. ESTEFAN:

24 Q. Mr. Bortz, do you have any explanation for how Jamie's  
25 wrists got bruised or were bruised the morning of the 28th?

10:18

1 A. No, sir. I saw nothing, and I did nothing.

2 Q. Do you have any explanation for how the bruises got on the  
3 inside of both of her thighs?

4 A. No, sir.

10:18

5 Q. Any explanation for how her breasts got injured?

6 A. None, sir.

7 MR. ESTEFAN: Give me one second, please, Mr. Bortz.

8 *(Sotto voce discussion between plaintiffs counsel)*

9 BY MR. ESTEFAN:

10:18

10 Q. Mr. Bortz, there was some -- there was DNA testing done on  
11 fluids found on Ms. Jones. You know that?

12 A. I'm aware of that, sir.

13 Q. Yes. In fact, the doctor's report found copious mucoid  
14 discharge. Do you have any explanation for how that got on

10:19

15 Ms. Jones?

16 MR. MCKINNEY: Your Honor, I don't like interrupting;  
17 but that is purely a question for a medical doctor to address.  
18 Copious mucoid discharge occurs for many, many reasons.

19 THE COURT: Yeah, I understand that. There's no  
20 prohibition on a fact witness testifying as to something that a  
21 expert witness will also testify about. I'm going to allow it.

10:19

22 A. Could you explain -- I don't exactly understand you. You  
23 mean mucus?

24 BY MR. ESTEFAN:

10:19

25 Q. Well, it's mucoid discharge, which could be mucus, could be

1 semen.

2 THE COURT: Have you ever heard previously the term  
3 "mucoid discharge"?

4 THE WITNESS: No, sir.

5 THE COURT: Let's move on. Let's move on.

6 BY MR. ESTEFAN:

7 Q. All right. Mr. Bortz, as a firefighter, part of your job  
8 is carrying people, fair?

9 A. Yes, sir, part of my job is training to do that.

10 Q. And on this -- would it be possible for you to lift Jamie  
11 Jones into that upper bunk?

12 A. How so, sir?

13 Q. Well, physically can you lift her? Are you capable of  
14 doing that?

15 A. I don't know, sir. I think it's possible.

16 Q. Okay. The night that you-all got together out at the  
17 picnic tables, when that evening ended, you were drunk, weren't  
18 you?

19 A. No, sir. I did not state that at any time.

20 Q. Okay. You had been drinking?

21 A. I had had some drinks, yes, sir.

22 MR. ESTEFAN: I'll pass the witness.

23 Thank you, your Honor.

24 ////

25 ////

**CROSS-EXAMINATION**

BY MR. MCKINNEY:

Q. It's customary for a party to introduce himself or herself, to a degree, to the jury. And, so, I'm going to go back and fill in some of those blanks at this point.

Tell us a little bit, where you were born, where you were raised, family you grew up in, that kind of thing.

A. I was born in Southern Oregon. We stayed there until -- I want to say I was in the fourth grade; and we moved to the

Northwest, Astoria, Oregon, and then went to Warrington, Oregon, which is right across the bridge. It's a small fishing and logging area. It's pretty much all the community does.

Q. All right. You're a firefighter?

A. Yes, sir.

Q. When did you first begin working with a fire department?

A. Well, I was a volunteer in Warrington, Oregon, at the age of 17.

Q. Did you go through high school?

A. Pardon me?

Q. Did you go through high school?

A. Yes, sir.

Q. Graduated from high school?

A. (Nodding head).

Q. What did you do after you got out of high school?

A. Twelve days after graduation, I joined the Air Force.

10:22 1 Q. How long were you in the Air Force?

2 A. Eight years, eight months.

3 Q. Okay. The court reporter is -- you talk kind of fast.

4 A. Sorry.

10:22 5 Q. Okay. And what did you do in the Air Force?

6 A. I was a firefighter the entire time.

7 Q. You entered the Air Force as a Basic Airman E-1?

8 A. Yes, sir.

9 Q. Were you promoted during your time in the Air Force?

10:22 10 A. Yes, sir.

11 Q. What was your rank or grade when you separated from the

12 Air Force?

13 A. I was an E-5, which is a staff agent.

14 Q. Your discharge was -- how were you discharged? What

10:22 15 was the --

16 A. I elected to leave the military, not because of any sort of

17 issues.

18 Q. Did you have an honorable discharge?

19 A. Yes. Yes.

10:23 20 Q. All right. Now, when you left the military, who did you go

21 to work for?

22 A. Kellogg Brown & Root.

23 Q. And how much time was there between you leaving the

24 military and going to work for KBR?

10:23 25 A. I know that I either got, like, officially discharged or my

1 terminal leave ended on March 5th. And then I left very  
2 shortly after that, two to three weeks after that, for Houston.

3 Q. And when you were hired by KBR as a -- well, what was your  
4 job when you were hired by KBR, what were you hired to do?

5 A. I was a captain, which is crew chief, which is responsible  
6 for himself and the other people on the vehicle and assigns  
7 tasks and duties, on emergencies and off.

8 Q. All right. So, you hired in as a captain in KBR's fire  
9 department?

10 A. Yes, sir.

11 Q. And, by the way, let me go back. In your military career,  
12 did you have any overseas duty?

13 A. I served 16 months in Honduras; and I was deployed to  
14 England, Kuwait and Afghanistan.

15 Q. All right. Back to KBR, you've told us, I believe, already  
16 when you started with KBR and when you went to Iraq and so  
17 we'll let that stand.

18 Your relationship with Beneta Brumatti, do you  
19 remember approximately when that began while you were in Iraq?

20 Or just how long were you and Beneta Brumatti  
21 together as boyfriend and girlfriend?

22 A. I think three months. So, it was shortly after I arrived.

23 Q. All right. Now, we're going to talk now about the evening  
24 in question and the morning after. And you've already answered  
25 a number of questions about that, and you've told us -- or told

1 the jury a number of times that you just don't remember?

2 A. Yes, sir.

3 Q. You have before you a document that's been marked. If  
4 you'll look in the lower portion, there's a sticker on it that  
5 says 185.

6 A. Yes, sir.

7 Q. And you recognize what --

8 MR. McKINNEY: And more specifically, your Honor, that  
9 is Joint Exhibit 185.

10 THE COURT: All right.

11 BY MR. McKINNEY:

12 Q. Do you recognize the document that is marked as 185, or  
13 Joint 185?

14 A. Yes, sir, I do.

15 Q. And what is that document?

16 A. I believe this to be my statement to the State Department.

17 Q. All right. Now, are there a number of things in that  
18 statement that you were able to remember six years ago that,  
19 because of the passage of time, you just aren't able to  
20 remember today?

21 A. Yes, sir.

22 Q. And just, then, kind of generally, before we get into the  
23 details of your statement and the details of that evening, did  
24 you answer all of the questions that were put to you by the  
25 State Department special agents as truthfully and honestly as



10:26

1 you could?

2 A. Yes, sir, I did.

3 Q. When you were interviewed by those agents, you understood  
4 that Ms. Jones had accused you of rape?

10:26

5 A. Yes, sir.

6 Q. Did you understand when you answered those questions that  
7 you were being interviewed as a suspect in a rape case?

8 A. Yes, sir, I did.

10:26

9 Q. Were you told that you did not have to give an interview,  
10 that you could stop the interview at any time, that --  
11 essentially given what we would call Miranda rights?

12 A. Yes, sir.

13 Q. Did you understand then and do you understand today that  
14 when there's an accusation of a crime you have the right as an  
15 American citizen to refuse to answer any questions

10:27

16 whatsoever -- any and all questions?

17 A. I understand that, sir.

18 Q. Did you understand that back then?

19 A. Yes, sir, I did.

10:27

20 Q. Did you, nonetheless, waive your Fifth Amendment rights  
21 back then?

22 A. Yes, sir, I did.

23 Q. And answer each and every question that was put to you?

24 A. That's correct.

10:27

25 Q. Since coming back to the United States, were you

10:27 1 interviewed, under oath, by other federal law enforcement  
2 officials?

3 A. Would you rephrase that? Federal law enforcement  
4 officials, not that I recall. Other attorneys?

10:27 5 Q. Yes, people working for the United States Government.

6 A. Yes, sir.

7 Q. Were you interviewed by people working for the United  
8 States Government, under oath and did you waive the Fifth  
9 Amendment again here in the United States?

10:28 10 A. That is correct, sir.

11 Q. And did you answer all of the questions that were put to  
12 you, fully and freely and as honestly as you could, without  
13 taking the Fifth Amendment?

14 A. That's correct, sir.

10:28 15 Q. You gave a deposition in this case, under oath?

16 A. Yes, sir.

17 Q. Did you at any time take the Fifth Amendment regarding --  
18 during your deposition?

19 A. No, sir, I did not.

10:28 20 Q. Have you ever refused to answer questions put to you about  
21 Ms. Jones' allegations, on the grounds of the Fifth Amendment  
22 or any other reason?

23 A. Not at any time, sir.

24 Q. Okay. Now, referring back to the day in question -- and if  
10:28 25 you need to look at your statement, feel free to do so. And I

1 will from time to time call your attention to some of the  
2 details in the statement.

3 A. Yes, sir.

4 Q. The day before -- or sorry. The day of the social  
5 gathering, before the gathering that evening, you had played  
6 video games in your room with your roommates?

7 THE COURT: One -- I'm sorry. One moment.

8 *(Sotto voce discussion at bench with court staff)*

9 THE COURT: Our juror has had to make a trip to the  
10 restroom. We'll wait just a few minutes.

11 Okay. We're ready. Let's continue.

12 MR. McKINNEY: Could I have the last question and  
13 answer? I think I've forgotten where I was.

14 THE COURT: I think I can do that.

15 "The day before -- or sorry. The day of the  
16 social gathering" --

17 MR. McKINNEY: I know exactly where I was. Thank you,  
18 your Honor.

19 BY MR. McKINNEY:

20 Q. Earlier in that day, you and your friends -- some of your  
21 friends had been playing games, the video-type games, in your  
22 room?

23 A. No. Actually, that night in question -- it says on here,  
24 on the statement, 1730, 1800 hours --

25 Q. Right.

10:32

1 A. -- when I was with Mr. McCaw and Mr. Ryan.

2 Q. So, what time would that be in civilian time?

3 A. I'm sorry. 5:30, 6:00 o'clock.

4 Q. You were playing video games, drinking some beer?

10:33

5 A. We were just sitting around. I don't recall specifically.

6 I mean, we talked a lot.

7 Q. Okay. In any event, so that the jury fully understands the

8 time sequences and your level of alcohol consumption, when you

9 were with your friends before joining the gathering, I believe

10:33

10 your statement says that you had had five to six beers?

11 A. Yes, sir, that's what my statement says. I agree with

12 that.

13 Q. Now, at the social gathering itself, do you recall or does

14 your statement state, either way, how much alcohol you

10:33

15 consumed?

16 A. I recall for sure saying I shared the mixed drink with

17 Ms. Jones, but I'm not sure what it says in regard to whether I

18 had another beer before that or during that time. I can read

19 it if you like.

10:33

20 Q. No. That's fine.

21 So, that evening, you've talked about seeing

22 Ms. Jones talking on the phone and inviting her to join you?

23 A. (Nodding head.)

24 Q. Now, at some point she wound up with a glass of Baileys?

10:34

25 A. Yes, sir.

10:34 1 Q. And how did she get that glass of Baileys? Did she go to  
2 her room and get that?

3 A. Yes, sir. To the better extent of my knowledge, it came  
4 from her.

10:34 5 Q. Do you know how many times Ms. Jones left the gathering  
6 area and returned? Do you recall how many times?

7 A. I believe twice.

8 Q. Do you recall Ms. Jones calling you?

9 A. Yes, sir.

10:34 10 Q. If you would, please, look at the third page of your  
11 statement and look at the second full paragraph and see if you  
12 can see the time that the Department of State agents documented  
13 the phone call to you from Ms. Jones.

14 A. You said Page 3, sir?

10:35 15 Q. It's Page 3 of my statement --

16 A. Sorry, sir. It's Page 4.

17 Q. Page 4. My -- you're right. It's Page 4.

18 A. Yes, sir, I see what it says.

19 Q. And what time is that?

10:35 20 A. It says 2211, which is 10:11.

21 Q. 10:11. Now, turn to the last page and look at the top  
22 paragraph.

23 A. Yes, sir.

24 Q. And look at the last sentence. In fact, would you mind  
10:35 25 reading the last sentence for us, slowly?

1 A. You're talking about the sentence that starts with, "Prior  
2 to resuming questioning"?

3 Q. Yes.

4 A. "Bortz presented his cellular phone and showed RA and  
5 SA McCormick two missed calls which came from the telephone  
6 number labeled 'Jamie Jones,' one at 2121 hours," which is  
7 9:21, "and one at 2122 hours," which is 9:22, "on 27 July,  
8 2005."

9 Q. Do you actually remember showing your cell phone to those  
10 agents and showing those two earlier missed calls from  
11 Ms. Jones?

12 A. I remember giving them the phone, yes.

13 Q. Do you recall as you sit here today whether you were -- do  
14 you recall seeing your phone and seeing that Ms. Jones had  
15 actually tried to contact you twice earlier in the evening,  
16 before she finally got ahold of you at 10:00 -- at 11 minutes  
17 after 10:00 that evening?

18 MR. ESTEFAN: Your Honor, I'm hesitant to stand; but  
19 there's a lot of leading questions. This is his witness.

20 MR. McKINNEY: It certainly is my witness, and the  
21 problem is six years have gone by and -- I can try to break it  
22 down.

23 THE COURT: I'll allow this last question. Then we  
24 should limit the number of leading questions.

25 MR. McKINNEY: I will do the best I can, your Honor.

1 THE COURT: The question pending was do you recall  
2 seeing your phone, seeing that Ms. Jones had actually tried to  
3 contact you twice earlier in the evening, before she got hold  
4 of you.

5 A. Sir, I do not specifically remember that.

6 BY MR. ESTEFAN:

7 Q. Does it appear from your statement that Ms. Jones had  
8 actually tried to contact you twice earlier in the evening,  
9 before she finally got you at 11 minutes after 10:00?

10 A. Yes, sir, it appears that way.

11 Q. Do you remember who -- do you remember the names of the  
12 various people who were at the gathering, as we've been calling  
13 it, the evening of Wednesday, the 27th?

14 A. Just from my head I can remember Michael McCaw, Matthew  
15 Ryan, I believe Greg Soriano, Tyler Schmidt, Jaime Castillo,  
16 Erica Dollar, and Sara Simco was the only names I can remember  
17 off the top of my head.

18 Q. Do you remember Matt Ryan bringing a drink down, that he  
19 had made for Jamie Leigh Jones?

20 A. Yes, I do.

21 Q. Did you drink any of that drink?

22 A. Yes, I did.

23 Q. Did you and Ms. Jones share that drink?

24 A. Yes, sir, we did.

25 Q. Did that drink have any impact on your ability to function,

10:38 1 to remember, to control your actions; did it have any impact on  
2 you at all?

3 A. No, sir.

4 Q. Did Ms. Jones appear to have been affected or impacted by  
10:39 5 that drink in any way?

6 A. No, sir.

7 Q. Did her demeanor change, her ability to speak or  
8 communicate?

9 A. No, sir.

10:39 10 Q. Her alertness, her awareness, did any of that appear to you  
11 to change?

12 A. No, sir. She did not appear impaired to me at all.

13 Q. Do you recall anything about arm wrestling, how you and  
14 Ms. Jones sat together, anything of that nature?

10:39 15 A. I recall -- and I'm not sure who challenged who, but I  
16 think Matt challenged me to an arm wrestling contest and we did  
17 so.

18 Q. And after that?

19 A. Then, after that, Ms. Jones challenged me to do the same  
10:39 20 thing.

21 Q. You and Ms. Jones, were you sitting together?

22 A. At one point later in the evening, we were sitting next to  
23 each other.

24 Q. Did you hold hands at any point?

10:39 25 A. Yes, sir.



10:39 1 Q. When the evening wrapped up, do you recall who the last few  
2 folks were at the gathering when it broke up?  
3 A. Not positively, no, sir.  
4 Q. All right. Do you recall about what time in the evening it  
10:40 5 was that the gathering ended?  
6 A. From my statement. But from my mind, no, I don't remember  
7 specifically.  
8 Q. Based on your statement, about what time did the gathering  
9 end?  
10:40 10 A. Based on my statement, it's around 11:45, midnight.  
11 Q. Tell us in your own words how you and Jamie Leigh Jones  
12 came to be in her room.  
13 A. As we came into the building, into the foyer --  
14 Q. From the point in time when the gathering breaks up.  
10:40 15 A. All right. We walked into the building together, and she  
16 was on the stairway and stopped. And as I was coming in the  
17 doorway, she asked me if I wanted to go upstairs with her to  
18 her room.  
19 Q. And what did you say?  
10:40 20 A. I said, "Yes." And I proceeded upstairs with her.  
21 Q. Went inside the room?  
22 A. Yes, sir.  
23 Q. One thing led to another?  
24 A. Yes, sir.  
10:41 25 Q. Did the two of you take off your clothes?

10:41

1 A. Yes, sir.

2 Q. Did you undress yourself?

3 A. Yes, sir, I did.

4 Q. Who undressed Ms. Jones?

10:41

5 A. She did, sir.

6 Q. Without going into any details, were you intimate?

7 A. Yes, sir.

8 Q. At some point in your intimacy, did anything happen that  
9 seemed unusual to you?

10:41

10 A. Yes, sir.

11 Q. And did you tell the special agents about that, and is the  
12 detail of that in your statement there before you?

13 A. Yes, sir, it is.

14 Q. Very, very briefly and without going into the detail that  
15 you went into with the agents, what happened at that point?

10:41

16 A. She grabbed me by the hand and requested that I follow her  
17 into the hallway and have intercourse there on the railing to  
18 the stairwell.

19 Q. Did you stay in the hallway for a very long period of time?

10:42

20 A. No, sir, we did not.

21 Q. What did you do?

22 A. I was very uncomfortable, sir.

23 Q. After leaving the hallway, what did you do?

24 A. We continued back to the room and had intercourse for a  
25 short time.

10:42

10:42 1 Q. And you say "for a short time." Why was that?

2 A. It was late. I was very tired.

3 Q. At some point did Ms. Jones ask you to stop?

4 A. Yes, sir, she had.

10:42 5 Q. And is that documented in your statement?

6 A. Yes, sir.

7 Q. And why did -- and when Ms. Jones asked you to stop, what  
8 did you do?

9 A. I complied.

10:42 10 Q. And did Ms. Jones tell you or did you discuss why you  
11 stopped making love?

12 A. Yes, sir.

13 Q. And what was the reason given by Ms. Jones for stopping?

14 A. She was concerned about the fact that I had been seeing  
10:42 15 another woman, Beneta Brumatti.

16 Q. And what did you tell Ms. Jones?

17 A. I told her that it was something I had to deal with and I  
18 was okay.

19 Q. And then what happened?

10:43 20 A. And then I asked her if she wanted to continue having  
21 intercourse.

22 Q. And?

23 A. And she said yes, and we did.

24 Q. Then what happened?

10:43 25 A. That was when we -- we started again. But it was getting

10:43 1 really late, and I was very tired; so we pretty much just  
2 stopped and went to sleep.

3 Q. Did the two of you sleep together?

4 A. Yes, sir.

10:43 5 Q. Same bed?

6 A. Yes, sir.

7 Q. You've told us what happened the next day; but there are a  
8 couple of details that are in your statement, that I would like  
9 to bring out at this point. When you left the room, after

10:43 10 trying to wake her up, to go to the bathroom and you came back  
11 to her room, was anyone there?

12 A. No, sir. Oh, at the doorway.

13 Q. Standing outside the door.

14 A. Yes, sir.

10:43 15 Q. Standing outside the door?

16 A. Not in the room, no.

17 Q. Who was standing outside the door?

18 A. I have to read, because I know his name is Anthony but I  
19 don't know if that's his first or last or -- I know he's  
10:43 20 another employee that worked for IT.

21 Q. Did you have a conversation with Anthony?

22 A. I don't recall exactly what was said but I believe he  
23 inquired as to her whereabouts and I said that she wasn't ready  
24 to go to work yet. Because he was there to walk her to work.

10:44 25 Q. All right. You went back in the room?

10:44

1 A. Yes, sir.

2 Q. And Ms. Jones, was she there at that time?

3 A. No, sir.

4 Q. When she came back into the room, you had a conversation  
10:44 5 with her?

6 A. Yes, sir.

7 Q. And tell us about that.

8 A. She had walked into the room and asked me, "Did we have sex  
9 last night?"

10:44

10 And I don't recall my exact words without reading  
11 my statement, but I was like, "Are you serious? That's not  
12 funny."13 And she said, "No. I was just kidding"; and she  
14 made it appear as though she was just making a joke.

10:44

15 Q. And she asked you whether the sex was protected?

16 A. Yes, sir.

17 Q. And you told her?

18 A. "No," sir.

19 Q. The next morning, you told us about holding the mirror and  
10:45 20 walking her outside; and so we're not going to go back over  
21 that again. Later that day, you received a phone call from  
22 Sara Simco?

23 A. Yes, sir.

24 Q. And Sara told you that Ms. Jones was making these  
10:45 25 allegations?

10:45 1 A. Yes, sir.

2 Q. What was your reaction when you heard that?

3 A. I was completely shocked. I didn't even know how to react  
4 to it really. It was disbelief.

10:45 5 Q. And when you were interviewed by the State Department  
6 agents, what was your state of mind at that time?

7 A. You mean during my first interview?

8 Q. Yes.

9 A. I was scared. I was stressed. I was confused.

10:45 10 Q. The State Department agents, when they questioned you, were  
11 they aggressive in their questioning?

12 A. Not at first; but, later on, they were very aggressive,  
13 yes.

14 Q. And asked you many questions and went back over details?

10:46 15 A. Yes, sir, repeatedly.

16 Q. Tried to find holes in your story?

17 A. Yes, sir.

18 Q. Which you would expect someone investigating a crime to do?

19 A. Yes, sir.

10:46 20 Q. Now, that morning, before you got the phone call from Sara  
21 Simco, did you get a phone call from anyone else?

22 A. Yes, sir.

23 Q. And who was that?

24 A. I did get a phone call from Jamie Leigh Jones.

10:46 25 Q. And what was the nature of that phone call from Ms. Jones?

10:46 1 A. I don't remember the exact things that were said, but the  
2 gentleman -- it says "Anthony." I'm sorry, I don't see any  
3 other differentiation -- had told her that he was in some way  
4 offended or upset by the fact that I had slept with her and I  
10:47 5 was dating another woman at the time. So, she called me to  
6 inform me of that.

7 Q. And that's all documented in your statement?

8 A. Yes, sir.

9 Q. I'm just about finished.

10:47 10 Are you here to tell this jury that you are a  
11 hero or an angel or someone special deserving of their  
12 consideration?

13 A. I'm just a regular person like everyone else.

14 Q. Did you rape Jamie Leigh Jones?

10:47 15 A. No, sir, I did not.

16 Q. You have not been here for this trial?

17 A. No, sir.

18 Q. Where have you been?

19 A. I've been in South Carolina.

10:48 20 Q. What do you do in South Carolina?

21 A. I'm a GS7 driver operator. I work for the United States  
22 Air Force at Charleston Air Force Base.

23 Q. Is your crew currently fully staffed?

24 A. No, sir. We have to make up for deployments and schooling,  
10:48 25 training and such as that.

1 Q. Are you understaffed and is that why you are remaining in  
2 South Carolina rather than being here for this trial?

3 A. Absolutely.

4 MR. MCKINNEY: Pass the witness.

5 THE COURT: Yes, sir, Mr. Hedges.

6 MR. MCKINNEY: Oh, your Honor, I move for the  
7 admission of Bortz -- sorry -- Joint Exhibit 185.

8 THE COURT: Motion granted.

9 MR. HEDGES: May I proceed, your Honor?

10 THE COURT: You may proceed.

11 **CROSS-EXAMINATION**

12 BY MR. HEDGES

13 Q. Good morning, Mr. Bortz.

14 A. Good morning, sir.

15 Q. My name is Dan Hedges. I'm a lawyer for KBR.

16 How old are you now, sir?

17 A. I'm 34.

18 Q. And you said you began as a firefighter when you were 17?

19 A. Yes, sir.

20 Q. Are you still a firefighter?

21 A. Yes, sir.

22 Q. So, half of your life has been spent as a firefighter?

23 A. Yes, sir.

24 Q. Is part of your training as a firefighter -- I recognize  
25 you're not a paramedic but a firefighter, but do you receive a



10:49 1 certain amount of medical training?

2 A. Yes, sir.

3 Q. Tell us a little bit about that.

4 A. Up until about three months ago, I was a first responder,  
10:49 5 which is basic bandaging and packaging of patients, like  
6 preparing them for transport, administering oxygen, controlling  
7 bleeding, and airway stuff.

8 Q. Are you trained to try to figure out what is wrong with  
9 somebody, what injury or illness do they have, so that you know  
10:49 10 how to treat it?

11 A. Yes, sir, in a very basic way.

12 Q. Do you know how to recognize someone who is in shock?

13 A. Yes, sir.

14 Q. How do you recognize whether someone is in shock?

10:49 15 A. Their basic appearance, their general impression as you  
16 approach them. Some people have slurred speech, appear as if  
17 they're having a heart attack. Some people have cool, clammy  
18 skin. There's lots of different ways to identify shock.

19 Q. And in responding to accidents and things like that, have  
10:50 20 you ever run into people who were under the influence of drugs?

21 A. I honestly don't recall.

22 Q. Okay. Let me ask you a few more questions about the  
23 morning of the 28th.

24 A. Yes, sir.

10:50 25 Q. When you saw and spoke to Ms. Jones, did she appear to be

10:50

1 in shock?

2 A. No, sir.

3 Q. Did she appear to be under the influence of drugs?

4 A. No, sir.

10:50

5 Q. Was her speech slurred?

6 A. No, sir.

7 Q. Was she confused in talking to you?

8 A. No, sir.

9 Q. Were her questions and answers making sense, and were they  
10 responsive?

10:50

11 A. Yes, sir.

12 Q. How was her gait? Was she walking? Was she wobbling back  
13 and forth or having an unsteady gait?

14 A. She seemed normal to me.

10:50

15 Q. Was there anything about her appearance or her demeanor  
16 that morning that did not seem normal?17 A. Only when she inquired about, "Did we have sex last night?"  
18 That's the only time her demeanor appeared off.

19 Q. How did it appear?

10:51

20 A. That's hard to explain. Just --

21 Q. But did you get the impression that she was joking?

22 A. I didn't at first. But then she said she was, and I really  
23 couldn't think of any other way to take it.

24 Q. Just a few more questions.

10:51

25 Was it Mr. Goodgine, from security, who was with

10:51

1 you during the Department of State interview?

2 A. Yes, sir, it was.

3 Q. How long did that first Department of State interview last?

4 A. I don't know if I look at the paper, but I think the first  
10:51 5 time I sat in there was approximately three and a half to four  
6 hours.

7 Q. And was Mr. Goodgine there with you the whole time?

8 A. Yes, sir.

9 Q. Did the Department of State approve of Mr. Goodgine being  
10:51 10 with you?

11 A. Yes, sir.

12 Q. Did Mr. Goodgine ask you any questions?

13 A. No, sir. He just sat.

14 Q. Did Mr. Goodgine object to any of the questions that the  
10:51 15 State Department asked you?

16 A. Not that I recall.

17 Q. Did Mr. Goodgine instruct you not to answer any of the  
18 questions that the State Department asked you?

19 A. No, sir.

10:52

20 Q. Did you answer every question the State Department asked  
21 you truthfully and completely?

22 A. Yes, sir, I did.

23 MR. HEDGES: I pass the witness, your Honor.

24 THE COURT: Any redirect?

10:52

25 MR. ESTEFAN: Brief redirect, your Honor.

**REDIRECT EXAMINATION**

BY MR. ESTEFAN:

Q. Mr. Bortz, you said earlier that you weren't drunk when you left the gathering?

A. That's correct, sir.

Q. Your statement actually says you were buzzed?

A. Yes, sir.

Q. And this State Department interview was begun on July 30th. Is that right?

A. Yes, sir.

Q. That's when the first interviews began?

A. I believe so, sir.

Q. Yes, sir. And after this incident, you weren't isolated by anybody at Camp Hope, were you?

A. You mean moved?

Q. Moved, put in a separate room, put in a container?

A. No.

Q. You had two days -- after you knew from your friend Sara's phone call, you had two days to get your story together before you got an interview, before these agents started interviewing you from the Department of State. Isn't that right?

A. Yes, sir.

Q. And do you recall -- you said you were very cooperative and gave everybody whatever they wanted. I would like to show you an exhibit. It's KBR 68, one page from that, Page 000263.

10:54 1 MR. ESTEFAN: Judge, we may need your intervention.

2 (At sidebar with all counsel)

3 MR. ESTEFAN: I asked him about that document because  
4 he said he never refused -- he gave a statement, he's never  
10:54 5 refused any cooperation with the State Department. And sure  
6 enough, it says he did not wish to submit to a sample of DNA.  
7 And that doesn't go to a criminal investigation. That's a  
8 continuation of the Department of State investigation.

9 MR. McKINNEY: I did not ask him about -- I asked him  
10:54 10 strictly about has he ever refused to answer any questions, has  
11 he ever taken the Fifth Amendment. And the answers were, no,  
12 he's never refused, never taken the Fifth Amendment.

13 This is not a request for a question, and there's  
14 nothing wrong with asking for counsel when --

10:55 15 MR. ESTEFAN: Of course, there's not.

16 MR. McKINNEY: And it's not even impeachment. It's  
17 punishing him for insisting or requesting the right to counsel.

18 THE COURT: But you raised the issue. I'm going to  
19 allow it.

10:55 20 MR. ESTEFAN: Thank you, Judge.

21 (Open court)

22 MR. ESTEFAN: Judge, I would like to mark this as  
23 Plaintiffs' 82 and offer it -- I think 83. I'm sorry.  
24 Ms. Loewe has got the numbers here.

10:55 25 THE COURT: Okay. Admitted over objection.

10:55 1 Okay. Juror is in the restroom again. I'm going  
2 to step off the bench for just a minute. Everybody may also  
3 step out.

4 *(Recess was taken from 10:56 a.m. to 11:08 a.m.)*

11:07 5 *(Jury present)*

6 THE COURT: Members of the jury, please be seated.

7 All right. You may resume your inquiry.

8 MR. ESTEFAN: Thank you, your Honor.

9 BY MR. ESTEFAN:

11:08 10 Q. Mr. Bortz, when Mr. McKinney was asking -- your lawyer was  
11 asking you about the State Department investigation --

12 MR. ESTEFAN: Is it off? Hello?

13 THE COURT: Sorry.

14 BY MR. ESTEFAN:

11:08 15 Q. Mr. Bortz, can you hear me better?

16 A. Yes, sir.

17 Q. When your lawyer, Mr. McKinney, was asking you about the  
18 State Department investigation and you said that you were fully  
19 cooperative and, you know, you were read your Miranda rights  
11:08 20 and all that stuff, do you remember all that?

21 A. Yes, sir.

22 Q. You were asked in October, October the 10th, in fact, of  
23 2005, to submit -- to voluntarily submit DNA samples by the  
24 State Department. They asked you that, didn't they?

11:08 25 A. Yes, sir.

11:08 1 Q. What did you tell them?

2 A. At the time all I can recall was telling them that I wanted  
3 to consult a lawyer first.

4 Q. So, you declined the request and asked for a lawyer?

11:09 5 A. I asked for the time to seek out a lawyer on my own so that  
6 I could protect my own rights. I didn't understand the  
7 situation.

8 Q. Mr. Bortz, how did you leave KBR?

9 A. What do you mean?

11:09 10 Q. Well, were you fired or did you quit?

11 A. I quit.

12 Q. When?

13 A. In May of 2006.

14 Q. So, roughly 10 months after this incident?

11:09 15 A. Yes, sir.

16 Q. And you were never disciplined --

17 A. No, sir.

18 Q. -- for this?

19 Remember back to that orientation in Houston --

11:09 20 here in Houston, at the Greenspoint Mall. One of the things  
21 KBR says in its literature is, "People are our biggest asset."  
22 Do you agree with that statement?

23 A. I don't recall specifically, sir; but I'm sure if it's  
24 stated --

11:09 25 Q. Well, would you agree that companies are a reflection of

1 the people they hire?

2 A. Yes, sir.

3 Q. Would you agree it's also true the other way around, that  
4 the people are a reflection of the company they work for?

5 A. Yes, sir.

6 MR. ESTEFAN: Pass the witness.

7 THE COURT: Any further questions?

8 MR. McKINNEY: Very, very briefly.

9 **RE CROSS-EXAMINATION**

10 BY MR. McKINNEY:

11 Q. In July of 2005 when the State Department investigators  
12 were speaking with you, did you give DNA samples at that time?

13 A. I don't believe it was in July, sir. I can't remember  
14 exactly what month it was that I gave it to them. It was  
15 shortly after they requested it.

16 Q. And have you since given additional DNA samples at the  
17 request of the State Department or some other US agency?

18 A. Yes, sir, that's correct.

19 MR. McKINNEY: That's all I have. Thank you, Judge.

20 THE COURT: Anything further?

21 MR. HEDGES: One.

22 **RE CROSS-EXAMINATION**

23 BY MR. HEDGES:

24 Q. Mr. Bortz, did the State Department ever take any action  
25 against you?



1 A. I'm not sure how to answer that, sir. I was --

2 MR. McKINNEY: Don't --

3 THE COURT: No, I don't think we need that.

4 THE WITNESS: Sorry.

5 THE COURT: Okay. No further questions?

6 MR. ESTEFAN: Nothing further, your Honor.

7 THE COURT: Okay. May we release Mr. Bortz?

8 MR. McKINNEY: Actually, Judge, in view of -- let me  
9 just clarify one thing. May I approach the bench?

10 *(At sidebar with all counsel)*

11 MR. McKINNEY: He didn't want to violate the motion in  
12 limine. The impression, inadvertently, has been left that  
13 maybe something bad happened; and I don't know how to clear the  
14 air on that.

15 THE COURT: Well, then we say there was no discipline  
16 imposed.

17 MR. KELLY: No. The whole point is, your Honor, is  
18 Mr. Hedges violated the motion in limine, blatantly. This  
19 needs to be ignored, left alone and left on. That was a  
20 blatant attempt to violate the motion.

21 MR. HEDGES: The State Department? I just asked if  
22 the State Department did anything.

23 MS. VORPAHL: Why can't we say no charges were ever  
24 brought against him?

25 MR. KELLY: That's the whole point. That's the whole

1 point.

2 MR. HEDGES: I thought it was related to the grand  
3 jury, your Honor.

4 THE COURT: Well, I meant to keep out for sure that  
5 the investigation by the Department of Justice.

6 MR. HEDGES: Did I say Department of justice?

7 THE COURT: No.

8 MR. KELLY: But your implication is no charges --

9 MR. HEDGES: That's absurd.

10 MR. KELLY: That's absurd, Dan. You knew what you  
11 were doing.

12 THE COURT: What can I say to fix it? Just that --

13 MR. KELLY: I ask it be left alone, Judge.

14 MR. McKINNEY: I think it would be appropriate to -- I  
15 think the appropriate statement to make is that the witness'  
16 response of not knowing how to answer was based on the Court's  
17 instruction to all parties not to go into certain areas and  
18 that the jury should not draw any negative inference from the  
19 witness' response.

20 MR. HEDGES: Or an inference of any kind.

21 MR. KELLY: Inference of any kind.

22 THE COURT: Okay. I'll give that.

23 *(In open court)*

24 THE COURT: Ladies and gentlemen, I cut off the  
25 witness' most recent answer because I didn't want him,

11:13 1 inadvertently, to violate one of the Court's instructions to  
2 the lawyers about what could be testified to and what could  
3 not.

4 Mr. Bortz had been instructed by his lawyer,  
11:13 5 correctly, as to what not to go into; and, for that reason, I  
6 made the decision that he shouldn't answer. No inference  
7 whatsoever should be drawn from that. Do you understand?

8 You may step down, Mr. Bortz. You're free to go.  
9 Thank you.

11:13 10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. Do we have another witness?

12 MR. ESTEFAN: We do, your Honor. We're going to try  
13 that video again, and we think it will be working.

14 THE COURT: Very good.

11:14 15 MR. ESTEFAN: We call Sara Simco by videotaped  
16 deposition.

17 THE COURT: We're having problems. It's going and no  
18 sound.

19 MR. ESTEFAN: I think I did announce the witness, but  
11:16 20 the Court said you might talk about --

21 THE COURT: Sara Simco is the person speaking.

22 MR. ESTEFAN: A KBR employee.

23 THE COURT: Sara Simco, whose name has been already  
24 invoked in this trial, is the deponent, is the person speaking.

11:17 25 MR. KELLY: Your Honor, can we take a short break and

1 get this in order?

2 THE COURT: That's fine. All rise for the jury.

3 *(Jury not present)*

4 THE COURT: Please be seated. As you may remember,  
5 this is the day I told the jury I would buy their lunch.

6 Anyway, so, they still want to do that. We're  
7 trying to expedite it by giving them menus from Massas. We'll  
8 take an order and then we'll phone in the orders so it will be  
9 ready. We'll have a longer than usual lunch hour.

10 You-all can sit down. I'm going to stay here  
11 during this break.

12 MR. ESTEFAN: This worked yesterday, Judge. I'm sorry  
13 about this.

14 THE COURT: That's all right. I'm an absolute Luddite  
15 when it comes to machines of all kinds.

16 *(Recess was taken from 11:18 a.m. to 11:46 a.m.)*

17 THE COURT: Okay. What's next?

18 MS. MORRIS: We have a couple of small issues on the  
19 deposition designations.

20 THE COURT: Let's go ahead.

21 MS. CATES: Stephanie is on her way.

22 MR. ESTEFAN: Actually, Ms. Holcombe is -- they're  
23 trying to work out depo problems.

24 THE COURT: Okay. That's fine.

25 Everybody back? Okay.

1 MS. HOLCOMBE: Your Honor, we have one small issue to  
2 take up right now regarding Ms. Simco's --

3 THE COURT: Yes. Let's take it up.

4 MS. HOLCOMBE: Your Honor, originally when we had  
5 objections -- we would have objected earlier, but it wasn't  
6 clear in here. I was just told from opposing counsel that at  
7 some point -- I believe probably around page 61 -- of  
8 Ms. Simco's video deposition they would like to stop the video  
9 deposition to show an exhibit of an e-mail.

10 We object to this for a couple of reasons. One,  
11 this particular e-mail is not on their trial exhibit list.  
12 But, more importantly, this particular e-mail was not offered  
13 as a deposition exhibit. It was not shown to Ms. Simco in  
14 her -- it's entirety and Mr. Kelly only read portions of this  
15 e-mail and therefor we feel that it is improper and unfairly  
16 prejudicial as Ms. Simco is not coming live to be able to  
17 discuss the rest of the e-mail, for them to offer it and show  
18 to the jury this unoffered, unintended exhibit that was not  
19 used in the deposition or now. We have no problem with the  
20 testimony that's considered. We agreed on that. It's fine.  
21 But actually showing on exhibit that was never offered we find  
22 prejudicial under 403.

23 MS. MORRIS: Your Honor, Mr. Kelly appeared by phone  
24 during this deposition and he read this e-mail directly to  
25 Ms. Simco and she discussed it during her deposition. We had

1 designated this portion of the deposition, and they had plenty  
2 of notice that we were going to talk about it and/or present it  
3 during the deposition cuts.

4 THE COURT: What's the subject of the --

5 MS. MORRIS: The e-mail is about -- Ms. Simco is  
6 employed as a KBR employee when she writes this e-mail to  
7 Mr. Bortz and says she wants to kill Ms. Jones, she hates her,  
8 et cetera.

9 And it was produced by the other side. So it is  
10 a KBR document.

11 MS. HOLCOMBE: Response -- oh, sorry.

12 THE COURT: Let me give Mr. Kelly time at bat.

13 MR. KELLY: Just to add to that, it's also between  
14 party opponents, your Honor, or at least two -- to and from one  
15 party opponent, for sure, and Ms. Simco.

16 It also shows her bias, not to mention -- and I  
17 think you just said this and I may be repeating myself. It was  
18 produced by these defendants. To say that --

19 THE COURT: She said that. Why wasn't it listed as an  
20 exhibit?

21 MS. MORRIS: I was under the impression it was  
22 included with the deposition exhibit when the deposition was  
23 noticed. And that specific portion, they were provided notice  
24 that we would be presenting it.

25 MS. HOLCOMBE: Response, your Honor?

1 THE COURT: Yes. It's a deposition of her talking  
2 about this e-mail?

3 MS. MORRIS: Yes.

4 MR. McKINNEY: She talks about selected portions of  
5 it, not the entire e-mail. The e-mail was not, as I recall,  
6 marked as an exhibit to her deposition.

7 MS. VORPAHL: It's not.

8 MR. McKINNEY: It is Ms. Simco's after the fact  
9 statement, expressing an unkind opinion about Ms. Jones.  
10 There's plenty of other evidence that will be in evidence that  
11 will show --

12 THE COURT: I normal would let it in except for this  
13 fact of not having been -- the other side not having been  
14 notified. Otherwise, I think it's relevant and --

15 MR. KELLY: Your Honor, they produced it. They've had  
16 it -- well before we had it. They produced it. There's been a  
17 number of documents that have been produced against us for just  
18 this reason, because we had them and therefore -- or to show  
19 bias.

20 THE COURT: Okay. You have to remind me. The  
21 defendants have used documents against you that weren't on the  
22 exhibit list?

23 MS. MORRIS: Yes. I think it was just yesterday.

24 MR. KELLY: Just yesterday. I mean, I brought this to  
25 the Court's attention, that we continue to get documents from

1 the defense that were not on the exhibit list. And, at least  
2 in this case, this is a document that the defense produced.  
3 They had it.

4 THE COURT: No. I understand that point.

5 MS. HOLCOMBE: Your Honor, that's not what we're  
6 saying. We're not saying that just because it was not on the  
7 trial exhibit list that's our concern. We're not arguing  
8 authenticity, which is I think something you've addressed as  
9 far as us producing it. And we're not arguing hearsay. What  
10 we're arguing is it's unfairly prejudicial as Ms. Simco did not  
11 have the document in front of her during her deposition when  
12 she talked about it and that only portions of it were discussed  
13 during her deposition. It was not offered and admitted as an  
14 exhibit --

15 THE COURT: But Ms. Simco was represented or not?

16 MR. MCKINNEY: No.

17 MS. HOLCOMBE: No. No, your Honor. She was not  
18 represented.

19 So, we -- there's discussion in here that it's  
20 coming out regardless but to actually show this e-mail that was  
21 never shown to Ms. Simco --

22 THE COURT: Wait a minute. Okay. I would have  
23 thought -- let me say this. I would have thought that if other  
24 parts of the e-mail had not been asked -- had not been inquired  
25 about and other parts of the e-mail are not as damaging as the



1 parts they wish to use, wouldn't that be a good thing for you,  
2 to produce the whole e-mail?

3 MR. MCKINNEY: That's actually not the issue. A  
4 deposition is, in many ways, like taking testimony in open  
5 court. In open court it's inappropriate for an attorney to  
6 examine a witness selectively from a document that has not been  
7 shown to the witness, that has not been marked as an exhibit is  
8 and is not either a part of the deposition record or a part of  
9 the trial record. And that's exactly what happened here.

10 There's a line of testimony where the witness is being examined  
11 selectively from a document that was never made a part of the  
12 deposition.

13 Now, as adversaries, we are entitled to be aware  
14 of the fact that the line of questioning is improper, that the  
15 document has not been properly made a part of the record and  
16 that the document is not -- that no foundation is being laid in  
17 the deposition for the admission of the document. And that is  
18 one of the many problems with this document.

19 THE COURT: But she's not -- apparently, they're not  
20 claiming any objection to authenticity.

21 MR. MCKINNEY: It's not a question of authenticity.

22 THE COURT: What is the question? I have a hard time  
23 focusing on the issue.

24 MR. MCKINNEY: It's a question of a witness being  
25 examined selectively from a document that is not a part of the

1 deposition record.

2 THE COURT: Were you there at the deposition?

3 MR. McKINNEY: I was there.

4 THE COURT: Was KBR's attorney there?

5 MR. McKINNEY: Yes.

6 MR. HEDGES: I was.

7 MR. McKINNEY: But she was not a KBR employee at the  
8 time she was deposed.

9 MS. MORRIS: When she wrote it she was.

10 MR. McKINNEY: When she was what?

11 MS. MORRIS: When she wrote the e-mail she was a --

12 MR. McKINNEY: I understand that. I understand she  
13 was a KBR employee at the time she wrote the e-mail. But  
14 certainly not authorized -- certainly not authorized to make an  
15 admission on behalf of Charles Bortz. And her statement is a  
16 statement to Charles Bortz. It's an out of court statement  
17 offered for the truth of the matter asserted or,  
18 alternatively, to show some kind of bias or prejudice. But the  
19 statement has a tremendous amount of blow-back on my client  
20 Charles Bortz because it was made to him.

21 THE COURT: Why didn't -- if you-all were there, why  
22 didn't you just say, "You need to show her the whole document.  
23 You need to lay a predicate"?

24 I mean, that's -- you knew it would be coming --  
25 whoever -- even though Ms. Simco wasn't represented, you knew

11:54 1 it would be used against your clients. The time to clear all  
2 that up would have been at the deposition.

3 MR. HEDGES: The problem was Mr. Kelly was not  
4 physically present at the deposition. He took it video. So,  
11:54 5 there was no piece of paper to see.

6 THE COURT: Well, but you could have required him to  
7 read the whole thing if that was the issue.

8 MR. McKINNEY: Well, we could have asked him to read  
9 it; but we could not have required him to read it. And --

11:54 10 THE COURT: Did you do anything to let him know at the  
11 time there was going to be a problem with it if you try to  
12 introduce this at trial?

13 MS. MORRIS: The record does not reflect that.

14 MR. McKINNEY: No, Judge. But I would -- I mean, I  
11:54 15 believe in professional courtesy. I surely do. But for the  
16 same reason that if I thought Mr. Kelly were improperly laying  
17 a foundation in the courtroom, trying to offer an adverse  
18 exhibit or was not properly qualifying his witness in an  
19 effective way, I would not feel obliged to pass him a note and  
11:55 20 tell him how to practice law. It's -- nor has he ever passed  
21 me any notes to suggest a better way that I might go about  
22 doing things.

23 And with respect, when we are taking a deposition  
24 and we are adverse, it's I think pretty much the universal  
11:55 25 practice of trial lawyers to let the other side go about their

11:55 1 job the way they see fit and if their efforts fall short then  
2 their efforts fall short, just as I bear the burden of my  
3 efforts falling short.

4 MS. MORRIS: Your Honor, there --

11:55 5 THE COURT: I mean, that's -- there's a lot to what  
6 you say. But if, for example, there was an issue that you  
7 thought breached the attorney-client privilege, I think it  
8 would very definitely have been incumbent on you to raise it  
9 right then, not say later that, "I'm objecting to this because  
11:56 10 it trespasses on the privilege." You have to give him some  
11 opportunity to fix whatever you think is wrong.

12 MR. MCKINNEY: There's actually, Judge, two additional  
13 points. One, there is not an attorney-client privilege issue  
14 here that I'm aware of. Secondly --

11:56 15 THE COURT: No. I use that as an example.

16 MR. MCKINNEY: Also, we reserved all objections till  
17 time of trial except as to the form of the question. And I'm  
18 no procedural expert. Most of my practice is state court  
19 practice. But my assumption has always been that when you  
11:56 20 start making substantive objections on the record and -- that  
21 you wind up waiving those objections. And the Court now is  
22 suggesting that perhaps we should have made substantive  
23 objections at a time when all objections were reserved until  
24 the time of trial. And we could not have known --

11:57 25 THE COURT: Well, but what I am talking about is what

11:57 1 you didn't reserve, which is objections to the form of the  
2 question. I mean --

3 MR. McKINNEY: That's the only thing we reserved was  
4 to the form of the question. But this goes to the substance of  
11:57 5 the admissibility, not whether it was a leading or  
6 argumentative question or whether it called for speculation.  
7 That's not the issue on this offer.

8 THE COURT: No, no, no. You the don't reserve till  
9 time of trial the form of the question. You reserve till trial  
11:57 10 substantive issues.

11 MR. McKINNEY: Correct.

12 THE COURT: Okay. What I am saying is this seems to  
13 me a form of the question kind of problem. You could have  
14 asked Mr. Bortz, when he proffered his questions, to include a  
11:57 15 full rendition of the exhibit and that wasn't done. He could  
16 have done that at the time. But having him do it now is hard.  
17 Ms. Simco, I'm sure, is way out of subpoena range, right?

18 MS. MORRIS: Yes.

19 MR. McKINNEY: Yes.

11:58 20 MS. HOLCOMBE: And, your Honor, we would have -- there  
21 have been other deponents that have been out of state who have  
22 appeared or have been in state and Mr. Kelly has been  
23 unavailable where they have physically had exhibits. We've had  
24 exhibits introduced into our depositions in order to put on  
11:58 25 notice. But not having -- I would have raised this objection

11:58 1 earlier, when we first did this, but I was not aware at all,  
2 based on reading the deposition, that they were going to  
3 actually introduce the exact exhibit of the e-mail, because it  
4 wasn't referenced as it and it wasn't on their trial exhibit  
11:58 5 list.

6 THE COURT: I understand that. But I would think that  
7 the whole exhibit, which I can introduce -- allow introduction  
8 of now, would be in your favor. If you think that -- if you  
9 think Mr. Kelly was sharp shooting and just picking out the  
11:58 10 damaging parts of the e-mail, that allowing the whole e-mail in  
11 could be to your client's benefit.

12 MR. MCKINNEY: Perhaps we're not being clear. The  
13 e-mail was never referred to and made an exhibit in the  
14 deposition.

11:59 15 THE COURT: I understand that.

16 MR. MCKINNEY: And, instead, questions were being  
17 predicated on the e-mail. Our objection is not, as I  
18 understand it, the questions themselves. It is simply to  
19 putting the e-mail into evidence during this witness' testimony  
11:59 20 when it was not made a part of the deposition, when it was not  
21 specifically referred to. That's the issue that we have, the  
22 document itself.

23 THE COURT: So are you saying that what's damaging to  
24 your clients about this is the cut and paste that was allegedly  
11:59 25 done by opposing counsel on the e-mail, or are you saying that

11:59 1 it's just a 403 problem?

2 I'm not sure what's -- if you're saying that he  
3 was just incorrectly editing the e-mail, we can take care of  
4 that. We can introduce the whole e-mail.

11:59 5 MR. MCKINNEY: I'm saying that you don't ask questions  
6 of a witness selectively from a document, any kind of document,  
7 in a deposition that -- where the document is not marked and  
8 given to the witness and the witness allowed to read it and  
9 then when you offer the deposition testimony you then put in  
12:00 10 the document that was never shown to the witness in the first  
11 place and never made a part of the deposition. It's like I'm  
12 doing a deposition of someone, I'm offering a deposition of  
13 someone, and I pull in some random document from some other  
14 place and say, "Let's look at this document while we're taking  
12:00 15 this witness' testimony."

16 THE COURT: Ms. Morris?

17 MS. MORRIS: Your Honor, if I could just remind the  
18 Court this e-mail is being used to show bias of Ms. Simco. And  
19 Mr. Kelly did read the portions that --

12:00 20 THE COURT: Shows bias.

21 MS. MORRIS: Yes, into the record. And she talks  
22 about them and she will talk about them during the deposition.

23 THE COURT: Okay. Assuming that's true, I guess what  
24 I hear from the other side -- I'm not sure about this -- is  
12:01 25 they don't want the whole e-mail entered.

1 MS. HOLCOMBE: Correct, your Honor.

2 THE COURT: The problem is not that he was sharp  
3 shooting and picking out certain portions of the e-mail. You  
4 think I fairly quoted from the e-mail, then.

5 MS. HOLCOMBE: Your Honor, he did quote from the  
6 e-mail. We do not want the rest of the e-mail in. She was  
7 never questioned about it. She has never seen it. And it will  
8 be unfairly prejudicial to the jury --

9 THE COURT: So, it's not that he took things out of  
10 context. It's that the whole e-mail is damaging to your  
11 client.

12 MS. VORPAHL: And it's not -- I don't believe -- I  
13 would like to see it. I don't believe it's a KBR document.

14 MS. MORRIS: It is.

15 MS. VORPAHL: Is it?

16 MS. MORRIS: Yes.

17 MS. VORPAHL: Then I apologize. It was not on KBR's  
18 computer system.

19 MS. MORRIS: It's written from KBR's e-mail. And,  
20 therefore, your Honor --

21 MS. VORPAHL: It is?

22 MS. MORRIS: Yes. She was still working for KBR when  
23 she wrote it.

24 MS. VORPAHL: I very much apologize. I was just under  
25 a misimpression.



12:01 1 MS. HOLCOMBE: The rest of it, your Honor, is the  
2 testimony in the plaintiffs' page and line designations covers  
3 what they want to use from the e-mail. So allowing the e-mail  
4 actually into evidence is cumulative of what they're already  
12:02 5 going to have Ms. Simco talk about.

6 THE COURT: These are all new objections. We now have  
7 cumulativeness. That's not normally a basis on which I exclude  
8 evidence unless it's really over the top. I mean, the jury can  
9 sort out what's cumulative and what's not.

12:02 10 MS. HOLCOMBE: It's above and beyond, your Honor.  
11 It's not to be separate and apart. Cumulative would still be  
12 under 403. The idea being that, one, the entire e-mail should  
13 not come in because Ms. Simco never saw the e-mail and was not  
14 questioned on the entire e-mail, is the first part. Then even  
12:02 15 if we were to only show the e-mail with only the parts that she  
16 was, that's cumulative and unfairly prejudicial under that.  
17 They get the same effect by getting to question her and the  
18 jury hearing the answers.

19 THE COURT: Then why are you opposing the whole e-mail  
12:02 20 if it's the same effect?

21 MS. HOLCOMBE: Because to have the e-mail on top of  
22 that would be unfairly prejudicial when Ms. Simco never saw the  
23 e-mail and the rest of the commentary was inside.

24 MR. KELLY: Using that logic, your Honor, we would  
12:03 25 never argue a physical exhibit at all. We would just hear from

1 the witnesses, no physical exhibits because everything would be  
2 cumulative if that's the logic.

3 MR. McKINNEY: No. It's just the opposite. What you  
4 don't do when you have a witness on the witness stand or in a  
5 deposition or on a video deposition being shown to the jury is  
6 you don't interrupt the witness' testimony and flash up a  
7 document for the jury to consider, that the witness does not  
8 have in their hand and has not had a chance to read from.

9 THE COURT: Okay. That's -- I keep thinking I  
10 understand the problem, and then the problem changes. If  
11 that's the problem, then let's put the whole e-mail up in  
12 advance of the -- in advance of the video clip.

13 MS. HOLCOMBE: She's not here live to discuss the rest  
14 of the e-mail. Since the e-mail was never shown to her during  
15 her deposition, she wasn't there to discuss and rehabilitate  
16 and talk about the other portions that the jury is going to  
17 see.

18 THE COURT: But that document -- if it had been listed  
19 properly, that document would have come in without anybody to  
20 sponsor it.

21 Ms. Morris, we need you for this.

22 MS. MORRIS: I'm sorry.

23 THE COURT: The document would be admissible even if  
24 you didn't have Ms. Simco's deposition, wouldn't it?

25 MS. MORRIS: I believe so, yes. It's a statement by a

1 KBR employee.

2 THE COURT: So, if that's true, then why -- I don't  
3 think the fact she wasn't asked about it carries any weight. I  
4 mean, they could introduce it without even referring to  
5 Ms. Simco.

6 MR. MCKINNEY: Perhaps the Court should see the  
7 document.

8 THE COURT: Okay. All right. That's fine.

9 MR. MCKINNEY: And with all due respect, simply  
10 because it's a statement by a KBR employee doesn't make it an  
11 admission of a party opponent. It has to be someone authorized  
12 to make the statement and of sufficient rank and standing in  
13 the company to be able to bind the company.

14 MS. MORRIS: No. I think it's they have to be an  
15 employee, just --

16 MS. HOLCOMBE: And acting within the course and scope  
17 when saying something, and this is not within the acting of the  
18 course and scope.

19 THE COURT: Well, this is a statement by the party's  
20 agent or service concerning a matter within the scope of the  
21 agency or employment, made during the existence of  
22 relationship. That sounds like it covers this.

23 Give Mrs. Loewe the document. I'll take a look  
24 at it while we're recessed.

25 MR. HEDGES: What time do you want us back, your

1 Honor?

2 THE COURT: Depends whenever they get back. You'll  
3 surely safe not getting back before 1:00 p.m.

4 *(Recess was taken from 12:05 p.m. to 12:54 p.m.)*

5 *(Jury not present)*

6 THE COURT: Okay. On the deposition excerpt, I think  
7 the parts that have been asked about are sufficient. I don't  
8 think we need the whole e-mail. So I'm not going to allow it  
9 in.

10 As to -- and then you had a question for me?

11 MS. HOLCOMBE: We have some additional objections on  
12 Arroyo. And there are only three and we've -- we had five and  
13 we agreed on two; so, now we only have three. So, hopefully --  
14 and we talked about them and I think we know what each other's  
15 objections and response are.

16 THE COURT: All right. Go ahead. Go ahead.

17 MS. HOLCOMBE: Okay. I have a copy for your Honor.

18 MR. KELLY: Your Honor, I want to make sure I'm clear  
19 on what the Court just ruled. Are you saying we can show the  
20 parts that were discussed but not the other parts?

21 THE COURT: No. Just show the deposition.

22 MS. HOLCOMBE: Okay. The first one is Page 74, Lines  
23 25 through 12. Your Honor we object to everything in pink.

24 THE COURT: One more time with the page and line.

25 MS. HOLCOMBE: Yes, your Honor. Page 74 begins at

1 Line 25 --

2 THE COURT: Okay. I'm with you. "During the time you  
3 were with KBR" --

4 Okay.

5 MS. HOLCOMBE: Our objection is, one, he said, "Did  
6 you ever hear of anything," that would be hearsay. But  
7 moreover, your Honor, it's not relevant and unfairly  
8 prejudicial as the alleged rapist in Ms. Barker's situation, he  
9 said, is not even a KBR employee at all. Therefore, it would  
10 be highly prejudicial to have this before the jury, as well as  
11 it's based on inadmissible hearsay by somebody who's not  
12 identified and will not come in to testify.

13 THE COURT: Okay.

14 MR. McKINNEY: And further to that, there's no  
15 indication of the point in time where Mr. Arroyo heard of this.  
16 If he heard of it after the date in question here in this  
17 trial, it's not relevant to any issue in the case. It would  
18 just be something that he heard --

19 THE COURT: I understand.

20 MR. McKINNEY: -- in addition, to the other  
21 objections. It won't prove notice or anything like that.

22 THE COURT: Okay. Let me hear a response from  
23 plaintiff.

24 MS. MORRIS: Your Honor, it does prove notice. That's  
25 exactly what it's being offered for, to show the environment

1 there in the Green Zone. Tracy Barker was a KBR employee.

2 THE COURT: Well --

3 MS. MORRIS: And this occurred one month prior to --

4 THE COURT: Well, it only offers notice if it were  
5 actually true, right? I mean --

6 MR. KELLY: Your Honor, we heard yesterday some  
7 testimony from a witness brought in by KBR to say, "This was a  
8 wonderful place. Nobody was ever raped. It was beautiful. In  
9 fact, there was no place better than Baghdad to work in the  
10 whole time I've been at KBR."

11 This stuff is happening right there. And that  
12 was a woman from human resources. And this is happening right  
13 under her nose.

14 MS. MORRIS: Response, your Honor?

15 She didn't say that nothing ever bad happens in  
16 Baghdad. There was a war going on; and there are other people,  
17 maybe insurgents or other things happening. What she said was  
18 that there were no allegations of rape by a KBR employee. And  
19 in this particular thing, Mr. Arroyo agrees, no, this person  
20 was not even a KBR employee.

21 THE COURT: Yeah. I don't think that comes in. I'm  
22 sorry.

23 MS. HOLCOMBE: The second, your Honor, on Page 148,  
24 Lines 2 through 22, we object -- you need to read it first,  
25 your Honor.

12:58

1

THE COURT: Yes. Give me a second.

2

Is this again notice; is that the notion?

3

12:58

5

MR. MCKINNEY: Well, no. This is being offered to show the availability or the -- I think the intent is to show the availability of Rohypnol and the question, "Do you know that Rohypnol was available in the Green Zone," he says, "Honestly, I don't know."

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12:58

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So, the question becomes the answer. It's a negative answer. He doesn't know. So, it's not evidence at all that a jury could decide one way or another.

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12:59

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The second question, "What drugs do you know to be available in the Green Zone," he said, "Steroids, blah, blah, blah, heroin and then over the counter drugs and what not, not relevant to any issue in the case. It's intended to prejudice, doesn't advance the ball one way or the other on any of the issues the jury is going to decide. It's of the class of evidence that is used to indirectly impugn, not impeach, but impugn a party to the lawsuit, which is not -- doesn't belong in the case.

12:59

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MS. MORRIS: Your Honor, this is a question that was asked by Mr. Hedges, the response about the drugs. And Mr. Arroyo does respond that there are steroids available in the Green Zone and our expert Tackett will testify that Rohypnol is a steroid.

12:59

25

MR. KELLY: As well as GHB.

12:59 1 MS. MORRIS: And the last sentence, on Line 21 through  
2 22, he says, "So, there's a myriad of different drugs that can  
3 be bought, both legal and illegal types of drug." So, he  
4 never --

12:59 5 THE COURT: Is this notice of drug use, is that what  
6 it is?

7 MS. MORRIS: Yeah, and the availability of drugs.

8 MR. McKINNEY: Judge, you previously ruled that  
9 proving simply that drugs were available or that some unknown  
01:00 10 person has access to drugs isn't probative of any issue in this  
11 case; and this is exactly what this class of evidence that this  
12 offer falls into. It's perfectly legitimate in the discovery  
13 deposition to ask questions about things that you don't expect  
14 to come into evidence. As the Court's said during Ms. Jones  
01:00 15 deposition, simply because it's discovered in a deposition  
16 doesn't make it admissible into evidence. And this is --  
17 again, doesn't show that anybody involved in this case, top,  
18 side or bottom, actually had possession of drugs or bought  
19 drugs or anything else.

01:00 20 THE COURT: Yeah. I don't think I can let this in. I  
21 think it is prejudicial, and I think -- I really think  
22 plaintiff hadn't done anything to show Rohypnol was involved in  
23 this case. But beyond that, beyond that, I think drugs are  
24 available every place.

01:01 25 MR. KELLY: Your Honor, they've made the argument in



01:01 1 the past and I believe they're going to make it in this case  
2 that because this was a locked down base and secure that the  
3 drugs couldn't be gotten.

4 THE COURT: In this trial they said that?

01:01 5 MR. KELLY: He said it not -- I don't know if he said  
6 it in this trial, but we have certainly heard that argument  
7 throughout this case in various depositions.

8 THE COURT: I'm concerned about what's in the trial.  
9 If they say that, then this is going to come in as --

01:01 10 MR. McKINNEY: No one is going to say drugs were  
11 unavailable in Iraq. That position will not be taken.

12 THE COURT: Yeah. I'm not going to be able to allow  
13 that.

14 MS. HOLCOMBE: And the last one, your Honor -- because  
01:01 15 we agree on the final two. The last one is Page 150, Line 25,  
16 through Page 151, Line 13.

17 MR. McKINNEY: There's not an agreement on that part.

18 MS. HOLCOMBE: Sorry. Yes, your Honor, for clarity,  
19 Page 150, Line 25, through Page 151, Line 13, there is an  
01:02 20 objection. I'll let you read, your Honor, and then --

21 THE COURT: Okay. "Those don't sound alike the  
22 comments of a woman who consented to sexual intercourse, do  
23 they, sir?"

24 Mr. Arroyo's response, "How could I -- in my  
01:02 25 personal opinion, I didn't judge Jamie on the answer as much as

01:02 1 I was just listening to her and seeing that she needed to voice  
2 something in her. At that point, yes, I could say, no, that  
3 doesn't sound conscionable. And, no, that sounds like  
4 something is up."

01:02 5 I'm not sure I understand this even.

6 MR. MCKINNEY: Well, I understand it perfectly, Judge,  
7 because I was at the deposition; and I know what the context of  
8 the question and answer is. And it's like this.

9 Pete Arroyo was being examined by Mr. Kelly as to  
01:02 10 whether Ms. Jones related to Mr. Arroyo her two questions to  
11 Charles Bortz, "Did we have sex? Was it protected?" And  
12 Mr. Kelly was eliciting Mr. Arroyo's lay opinion on the  
13 mind-set or mental status or mental intent of Charles Bortz in  
14 that, if Ms. Jones was asking these questions, wouldn't that  
01:03 15 indicate to you that there was perhaps some issue regarding  
16 consent between Ms. Jones and Mr. Bortz; otherwise, she  
17 wouldn't have asked these questions. And that's the type of  
18 answer that Mr. Arroyo was getting at here. And it's not just  
19 impermissible lay opinion, it's asking one lay witness to infer  
01:03 20 the state of mind of another party by hearing one side of a  
21 conversation to which that lay witness was not present.

22 THE COURT: Let's break this down for a second. The  
23 issue -- nobody is contesting that Ms. Jones did not ask, "Have  
24 we had sex" and "Did we have sex" and then "Did we use  
01:04 25 protection"? Nobody is contesting that, right?

01:04 1 MR. MCKINNEY: Clearly in the case.

2 THE COURT: So, what does this add?

3 MS. MORRIS: Your Honor, this is offered to show  
4 Mr. Arroyo's state of mind and his perception of Ms. Jones the  
01:04 5 morning after and why he ended up taking her to the clinic.  
6 This is his conversation with her about what happened and what  
7 she's experiencing at that moment. And in response to that, he  
8 thinks that she needs to go to the clinic.

9 And to add -- or to comment on Mr. McKinney's  
01:04 10 analysis that this is a lay opinion, he himself asked Ms. Jones  
11 why she thought Mr. Bortz would have walked her to the bus stop  
12 and --

13 THE COURT: Yeah, I'm going to allow this one. I'm  
14 going to allow it.

01:04 15 MR. MCKINNEY: Excuse me, Judge. I hate to belabor  
16 the point, but it's actually one that is fairly important. The  
17 question is: "Those don't sound like the comments of a woman  
18 who consented to sexual intercourse, do they?"

19 And with all due respect, no lay witness has any  
01:05 20 business coming into court and opining whether or not the sex  
21 between Jamie Jones and Charles Bortz was consensual. He was  
22 not there for any part of the conversation or any part of their  
23 being together.

24 THE COURT: 701 gives some latitude on these things if  
01:05 25 the witness is not testifying as an expert, the witness

01:05 1 testimony in the form of opinion is limited to -- it's not  
2 based on scientific, technical or specialized knowledge,  
3 helpful to a clearer understanding of the witness' testimony,  
4 rationally based on -- I think that covers it. I'm going to  
01:05 5 allow it.

6 Is the jury back yet?

7 Okay. We don't have a jury back yet.

8 MR. HEDGES: Your Honor, in view of the fact we're  
9 going to be playing depositions, would it be all right if later  
01:06 10 in the afternoon I sneak out a little early?

11 THE COURT: Sure.

12 MR. ESTEFAN: Judge, while you're still in the  
13 courtroom, since we haven't started Ms. Simco's deposition yet  
14 and Mr. Bortz did drop his counterclaim, could we get an  
01:06 15 announcement to the jury from the Court about the counterclaim  
16 being dropped? Because they didn't hear a bit of evidence  
17 about it during his testimony.

18 MR. MCKINNEY: There's no need for the Court to  
19 comment on dropping the counterclaim any more than there's a  
01:06 20 need for me to bring up the fact that they tried to amend their  
21 petition -- or their complaint and alter the pleaded facts.  
22 The counterclaim will not be submitted to the jury. There's  
23 nothing --

24 THE COURT: I thought you were worried that you had  
01:06 25 raised it in the initial argument and we -- did you say that

01:06 1 you were worried about the effect of --

2 MR. MCKINNEY: No, I'm not worried about it at all. I  
3 think it blew right by the jury, and I don't care. I don't  
4 think it needs to be commented on. It simply won't be  
01:06 5 submitted. The jury will decide the plaintiffs' case, and that  
6 will had be that.

7 MR. ESTEFAN: About four hours ago he took a different  
8 position, Judge; and that was that he was that he was okay with  
9 the Court or us, someone giving them an instruction. Because  
01:07 10 he injected the counterclaim into the case and now he's thrown  
11 that grenade in the box; and we can't undo that.

12 MR. MCKINNEY: This is not a proper time to make that  
13 instruction. There's nothing pending before the jury right now  
14 which would warrant the Court calling attention to that. The  
01:07 15 Court can at the time the Court charges the jury --

16 THE COURT: I think I'll revisit the issue then. Not  
17 now.

18 *(Recess was taken from 1:07 p.m. to 1:24 p.m.)*

19 *(Jury present)*

01:24 20 THE COURT: Members of the jury, please be seated.

21 All right. We're calling a witness by  
22 deposition. Is that correct?

23 MR. ESTEFAN: Your Honor, under the "third time is the  
24 charm" credo --

01:25 25 THE COURT: We'll try again. All right.

01:25

1 MR. ESTEFAN: -- call Sara Simco.

2 *(Videotaped of testimony of Sara Simco playing)*3 MR. ESTEFAN: Your Honor, that's our offer. I believe  
4 the defendants have their part.

01:53

5 THE COURT: All right. Do you understand that, ladies  
6 and gentlemen?7 The plaintiffs designated those passages for  
8 receipt into evidence, and now we're going to hear passages  
9 that the defendants wish to have in evidence.

02:16

10 *(Videotaped of testimony of Sara Simco playing)*

11 THE COURT: Okay. You wish to call another witness?

12 MR. KELLY: Anthony Adams also by video deposition,  
13 your Honor.

14 THE COURT: Who?

02:04

15 MR. KELLY: Anthony Adams.

16 THE COURT: Okay. Thank you.

17 *(Videotaped of testimony of Anthony Adams playing)*

18 MR. KELLY: That concludes our proffer, your Honor.

19 THE COURT: Does that complete the deposition?

02:33

20 MR. ESTEFAN: It does on that witness, Judge. We have  
21 yet another; and that would be Tyler Schmidt.

22 THE COURT: Tyler Schmidt.

23 MS. HOLCOMBE: We have --

24 MR. ESTEFAN: Oh, I'm sorry. They have cross. I  
02:33 25 thought that was their cross.

02:33

1

MS. HOLCOMBE: That was you-all's direct.

2

THE COURT: Okay. For the defendants now, their edits from the video deposition.

4

*(Videotaped of testimony of Anthony Adams playing)*

02:45

5

THE COURT: Okay. Does that complete that deposition?

6

MR. ESTEFAN: I believe it does, your Honor.

7

THE COURT: Okay. Do you have another?

8

MR. ESTEFAN: We do. Again, these are all overseas people. This is Tyler Schmidt, another KBR employee.

02:45

10

MS. CATES: Your Honor, can we approach before we start the next video?

12

THE COURT: Yes.

13

*(At sidebar with all counsel)*

14

*(Jury not present)*

02:46

15

THE COURT: Who wanted to talk first?

16

MS. CATES: I will.

17

Your local rules on your website say that all objections have to be removed from video depositions. We talked about it. They're all in there, in their clips.

02:46

20

MS. HOLCOMBE: We thought that was understood, too, between both sides back when we first talked about this at the pretrial conference.

23

MS. CATES: It calls attention to parts of testimony that --

24

02:46

25

THE COURT: Yeah. What can I do to fix that now?

0 2 : 4 6 1 MS. CATES: They can reduce their clips. I mean, our  
2 video person does that automatically pretty quickly. I don't  
3 think it's a huge process.

0 2 : 4 7 4 MS. VORPAHL: I would ask -- I'm sorry to interrupt my  
5 own colleague. But I would ask that you explain to the jury  
6 that both sides made objections during these depositions and  
7 that every effort has been made to remove the objections but it  
8 appears that some of our objections were not removed from their  
9 clips and understand that both sides have made these same kind  
0 2 : 4 7 10 of objections.

11 THE COURT: I don't have any problem doing that.

12 MR. MCKINNEY: And further, Judge, if you would ask  
13 the jury to disregard the objections and not to draw an  
14 inferences from them, explain that objections have to be made  
0 2 : 4 7 15 or they're waived and they usually are waived, as they have  
16 been in this case, obviously.

17 MS. CATES: And then I would just ask, for clips not  
18 played today, that they remove their objections.

19 THE COURT: We have the same issue with Mr. Schmidt,  
0 2 : 4 7 20 then?

21 MR. KELLY: We don't know, your Honor. We thought we  
22 had done it, I think. I think this is all part of the  
23 technical issue. I walked in on the tail end of this, but I  
24 certainly agree that -- you know, I wish they were out, too.

0 2 : 4 7 25 THE COURT: All right. I'll give an instruction.



02:47 1 (Recess was taken from 2:47 p.m. to 2:57 p.m.)

2 (Jury not present)

3 MS. VORPAHL: We just wanted to explain to the Court  
4 there appears there's so much redundancy and I asked my team  
02:57 5 why there was that redundancy in our cuts. And the answer is  
6 because they've gone back and -- when they saw our cuts, they  
7 decided to put stuff back in theirs. So, I mean, we're not --  
8 it's not the transcript that we had. And I just want the Court  
9 to understand why there's so much repetition.

02:57 10 THE COURT: That happens. I know it does. I've  
11 always thought that judges had a much easier job than lawyers,  
12 and this is one more validation of that problem.

13 MR. ESTEFAN: I think the hardest job in the courtroom  
14 is the tech person right now, it seems.

02:57 15 MS. CATES: Your Honor, if I could address one more  
16 issue, and this is --

17 THE COURT: On the record or off?

18 MS. CATES: On the record. I just want to make sure I  
19 don't violate any orders.

02:57 20 In William Goodgine's deposition, we have -- he  
21 talks about how the Department of State didn't bring charges  
22 against anyone. And there was no objection from the  
23 plaintiffs. So -- but I didn't -- before that gets played, I  
24 wanted to just make sure --

02:58 25 THE COURT: We need to get that out.

02:58

1 MR. KELLY: Yes. Thank you.

2 MS. CATES: I just -- since you didn't object, I  
3 didn't know if it was fair game.

02:58

4 MR. KELLY: I think when we looked at that it was  
5 before the judge ruled.

6 MS. CATES: That's why I brought it up now. So, we're  
7 not going to do Mr. Goodgine today.

8 MR. ESTEFAN: We'll do Tyler Schmidt and Pete Arroyo,  
9 I think.

02:58

10 THE COURT: Who's that?

11 MR. ESTEFAN: Pete Arroyo, your Honor.

12 THE COURT: Okay. Here's one more factoid. The jury  
13 says they want to work till 5:30.

14 MR. ESTEFAN: That's fine. That's enough time to get  
15 Pete Arroyo in, you know what I mean? Because his is going to  
16 be almost two hours, Judge.

17 THE COURT: Oh, my goodness.

18 MR. ESTEFAN: It really is.

19 THE COURT: Okay.

03:09

20 MR. ESTEFAN: Sorry about that.

21 THE COURT: Okay. Are we ready to go with Arroyo,  
22 then?

23 Okay. Let's get the jury in, then.

24 *(Jury present)*

03:12

25 THE COURT: Members of the jury, please be seated. We

03:12 1 have one more deposition excerpt to go through. Actually, two.  
2 But it's the -- first the plaintiffs' edits and then the  
3 defendants'. It's of Pete Arroyo, whose name you've heard  
4 often during this case.

03:12 5 I wanted to say something both about the  
6 depositions you will hear henceforth and the depositions you've  
7 already heard. You have occasionally heard lawyers assert  
8 objections. That is really no more than the lawyer saying, "I  
9 may want to talk to the judge about that question" or that  
03:13 10 answer before it's presented to a jury.

11 We intended to get all the objections edited out  
12 of the excerpts we're going to show you. They do slow things  
13 up, and they raise unnecessary questions. We didn't manage to  
14 do that consistently. But no inference whatsoever should be  
03:13 15 made based on the assertion of objections. That's every  
16 lawyer's rights.

17 If objections were not asserted, at least  
18 sometimes, the lawyer would be derelict. So, please do not  
19 weight at all the objections you hear in any of these  
03:13 20 depositions. Everybody clear on that?

21 All right.

22 MR. MCKINNEY: Judge, I appreciate that instruction.  
23 In addition, could the jury be informed that both sides are  
24 required to make those objections at that time in order --

03:13 25 THE COURT: Well, I thought I said that. I mean,

03:13 1 that's why a lawyer would be derelict if they do not object. I  
2 mean, they do need to be made.

3 All right. Let's roll.

4 MR. KELLY: Call Pete Arroyo by --

03:14 5 *(Videotaped of testimony of Pete Arroyo playing)*

6 MS. VORPAHL: Your Honor?

7 *(Sotto voce discussion between plaintiffs' and defense*  
8 *counsel)*

9 MS. VORPAHL: May we approach, your Honor?

04:11 10 THE COURT: Let's approach.

11 *(At sidebar with all counsel)*

12 MS. VORPAHL: They played what you --

13 THE COURT: Yeah, I heard it. We can hear it in  
14 chambers.

04:11 15 MR. KELLY: We stopped it as soon as -- it's a  
16 technical area.

17 MS. MORRIS: I double checked with them beforehand and  
18 I thought everything was okay. I double checked and made sure  
19 it was taken out but --

04:12 20 AUDIOVIDEO TECHNICIAN: On the program, it takes the  
21 dead space as well; so, it renumbered the -- so --

22 THE COURT: I see. Well, it's happened. What do you  
23 want me to do about it?

24 MR. MCKINNEY: I don't want to show any more of this  
04:12 25 deposition until we have certification from the plaintiffs'

04:12 1 technician that he actually has viewed the video and verified  
2 that it's properly edited.

3 This is happening too many times, and you can't  
4 unring a bell, can't put toothpaste back in the tube. And  
04:12 5 we're just running out of instructions we can give to fix these  
6 things.

7 THE COURT: That seems fair. Let's check and make  
8 sure we're not going to have it again.

9 I guess I need to excuse the jury, then.

04:12 10 Unless you have a live witness you want to call.

11 MR. McKINNEY: Are there any problems in the Schmidt  
12 deposition? Can we stop this one and pick up with Schmidt?

13 THE COURT: I would feel better if somebody actually  
14 sat down and listened to it.

04:13 15 MR. McKINNEY: Are there any problems, do we have any  
16 objections that if they come in it's a bomb?

17 MS. VORPAHL: I can check the --

18 MS. HOLCOMBE: There might not be anything major. I  
19 can confirm. If there's not any major thing, then I don't  
04:13 20 think there would be a problem.

21 MS. VORPAHL: Yeah. I don't know, though. I mean, I  
22 would rather just know that we've got it right.

23 THE COURT: That's what I think.

24 MS. VORPAHL: I do, too.

04:13 25 MR. McKINNEY: That's fine.

04:13 1 MS. VORPAHL: I mean, if this happens again --

2 MS. MORRIS: Your Honor, I can watch every video  
3 tonight.

4 THE COURT: All right.

04:14 5 *(In open court)*

6 THE COURT: Ladies and gentlemen, the best laid plans  
7 often go astray. We thought we had fixed all the problems with  
8 these excerpted depositions, and we found out we haven't. So  
9 I'm going to have to let you go today.

04:14 10 We'll resume at 8:30 in the morning. I do  
11 apologize. As I said before, there are lots of moving parts in  
12 any trial, especially one this lengthy and fact intensive. But  
13 we didn't get this right.

14 So, until tomorrow morning, would everyone please  
04:14 15 rise for the jury.

16 *(Jury not present)*

17 THE COURT: Okay. You may be seated. How many more  
18 video depositions are you going to use?

19 MR. ESTEFAN: About, I think, four or five, your  
04:15 20 Honor, after this one.

21 THE COURT: Are you at the end of your live witness?

22 MR. ESTEFAN: No, we're not at the end of our live  
23 witnesses.

24 THE COURT: How many more of those do you have?

04:15 25 MR. ESTEFAN: I would have to count them up, Judge,

04:15 1 but --

2 THE COURT: Okay. Well, at one point in this case I  
3 thought we were motiving right along; but now we're going to be  
4 at least all of next week, aren't we, a four day week?

04:15 5 MR. ESTEFAN: Yes, sir. We have two live witnesses  
6 tomorrow, at least, and possibly a video deposition if we can  
7 squeeze that in. And, so, we can get three more witnesses done  
8 that way.

9 And then we're going to start getting into the  
04:15 10 experts and family members of Ms. Jones.

11 THE COURT: So, we may be looking at two more full  
12 weeks.

13 MS. HOLCOMBE: I was going to say, when Mr. Estefan  
14 and I talked last night he was saying they're only a third of  
04:16 15 the way done with all their witnesses.

16 MR. ESTEFAN: We spent four days on Ms. Jones, your  
17 Honor. We didn't anticipate that.

18 MR. MCKINNEY: I have to say that's probably fair. I  
19 wouldn't have anticipated that much time with Ms. Jones either  
04:16 20 on the witness stand. So, that probably does throw their  
21 schedule off. But --

22 MR. KELLY: We also lost --

23 MR. ESTEFAN: And we've been accommodating defense  
24 witnesses. We've been doing everything we can.

04:16 25 THE COURT: No. I'm not trying to point the finger at

04:16 1 anybody. I'm just trying to see how far off I was in my  
2 prediction for the jury.

3 MR. McKINNEY: Pretty sure we'll be done by Labor Day.

4 MS. VORPAHL: Respectfully --

04:16 5 THE COURT: Well, we are going to start losing jurors,  
6 we really are.

7 MS. VORPAHL: I agree. And Mr. McKinney you say that.  
8 Labor Day is --

9 MR. McKINNEY: I'm kidding. That was a joke. We'll  
04:16 10 be done well before Labor Day.

11 MS. VORPAHL: No. Oh, I'm sorry. I'm thinking the  
12 Fourth of July. Yes. Yes, I agree; we will be done by Labor  
13 Day.

14 THE COURT: Okay. Well --

04:17 15 MS. HOLCOMBE: Your Honor, because the video  
16 deposition is not being transcribed by the court reporter  
17 during the time, since we did have an objection that was  
18 played, for purposes of the record, may I read to Ms. -- the  
19 court reporter --

04:17 20 THE COURT: Ms. Barron.

21 MS. HOLCOMBE: Yes, Ms. Barron -- the part that was  
22 objected to that was played that was the subject of our bench  
23 conference just five minutes ago?

24 THE COURT: Okay.

04:17 25 MS. HOLCOMBE: It was Page 148, beginning at Line 2,



04:17 1 of Mr. Pete Arroyo's deposition. And the part that was  
2 objected to that was played on the video was, "Okay. Do you  
3 know that Rohypnol was available in the Green Zone?

4 "Honestly" --

04:17 5 And then around that time things were objecting  
6 and things were being stopped. But I do believe it went as far  
7 as to, "Honestly, I did not know that. I knew drugs were  
8 available. So, I would surmise" --

9 And then, honestly, I don't know how much more  
04:18 10 was played at that point.

11 THE COURT: Okay. You're not moving for a mistrial on  
12 that, are you?

13 MR. MCKINNEY: No.

14 MS. HOLCOMBE: No, your Honor. Just for purposes of  
04:18 15 the record, though.

16 THE COURT: Well, I don't know there's anything we can  
17 do to move this along. We can start earlier and work later;  
18 but I really feel a great deal of sympathy for the court  
19 reporter, among others. And I don't think we ought to make the  
04:18 20 day too long or just -- I mean, biologically, we'll be trying  
21 to do a lot of hard things when everyone is very tired.

22 And I guess settlement is an academic fantasy.  
23 Is that right?

24 Okay. All right.

04:19 25 MR. KELLY: Your Honor, I would like to say for the

04:19 1 record also, while I stand here with egg on my face, there's  
2 nothing that was overt, nothing intentional. I'm embarrassed  
3 by what just happened. And just make the record clean --

4 THE COURT: I don't have any --

04:19 5 MR. KELLY: -- it was never intentional.

6 THE COURT: I haven't heard anyone suggesting it was  
7 intentional.

8 Okay. Anything more for me before we adjourn?

9 All right. Thank you very much.

10 *(Proceedings recessed for evening)*

11 \* \* \* \* \*

12 COURT REPORTER'S CERTIFICATION

13 I certify that the foregoing is a correct transcript from  
14 the record of proceedings in the above-entitled cause.

15 Date: June 23, 2011

16  
17 /s/ Cheryll K. Barron

18 Cheryll K. Barron, CSR, CMR, FCRR  
19 Official Court Reporter  
20  
21  
22  
23  
24  
25

<p>' Case 4:07-cv-02719 Document 308 Filed in TXSD on 06/27/11 Page 131 of 154</p> <p>'Jamie [1] 70/6</p>	<p>2:47 [1] 121/1</p> <p>2:57 [1] 121/1</p>	<p>about [1] 12/2</p> <p>above [5] 29/24 29/25 30/1</p>
-	3	105/10 130/13
-- you [1] 7/6	30th [2] 51/24 84/8	above-entitled [1] 130/13
/	34 [1] 80/17	absence [1] 5/23
/s [1] 130/17	36th [1] 2/6	absolute [1] 92/14
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000263 [1] 84/25	403 [3] 93/22 103/1 105/12	48/12 55/22 80/3
1	4:00 [1] 46/15	absurd [2] 90/9 90/10
10 [4] 10/20 11/4 44/22	4:30 [2] 46/15 46/16	academic [1] 129/22
87/14	4th [2] 20/19 20/21	access [1] 112/10
100 percent [1] 9/4	5	accidents [1] 81/19
1000 [1] 2/6	500 [1] 2/11	accommodate [2] 45/18 47/2
109 [1] 54/8	515 [1] 2/14	accommodating [1] 127/23
10:00 [3] 70/16 70/17 71/9	5:30 [2] 68/3 122/13	according [1] 12/14
10:05 [1] 47/7	5th [2] 20/21 63/1	accusation [1] 65/14
10:11 [2] 69/20 69/21	6	accused [1] 65/4
10:56 [1] 86/4	61 [1] 93/7	acknowledged [1] 37/24
10th [1] 86/22	68 [1] 84/25	across [2] 29/25 61/11
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